

Wochnick, Heather M CIV USN (US)

From: Macchiarella, Thomas L CIV OASN (EI&E), BRAC PMO West on behalf of Gilkey, Douglas E CIV OASN (EI&E), BRAC PMO West
Sent: Tuesday, October 12, 2010 9:01
To: Larson, Elizabeth A CIV OASN (EI&E), BRAC PMO West; Macchiarella, Thomas L CIV OASN (EI&E), BRAC PMO West
Subject: FW: Comments on TSRS, ETCA and FFA
Attachments: HPNS ETCA Version 10 7 10.doc.001; HPNS ETCA Version 10 7 10.doc; HPNS FFA 10 8 10.doc.001; HPNS FFA 10 8 10.doc; HPNS TSRS Oct 8 2010.doc.001; HPNS TSRS Oct 8 2010.doc

Categories: Hunters Point

-----Original Message-----

From: Andrea.Bruss@sfgov.org [mailto:Andrea.Bruss@sfgov.org]
Sent: Friday, October 08, 2010 17:42
To: Gilkey, Douglas E CIV OASN (EI&E), BRAC PMO West; Callaway, Rex CIV NAVFAC SW; Cummins, John M CIV NAVFAC SW; Kito, Melanie R CIV NAVFAC SW
Cc: Amy.Brownell@sfdph.org; gordonhart@paulhastings.com; erickahailstockejohnson@paulhastings.com; George.Schlossberg@KutakRock.com; Barry.Steinberg@KutakRock.com; Elaine.Warren@sfgov.org; Celena.Chen@sfgov.org; JAB@BCLTLAW.com
Subject: Comments on TSRS, ETCA and FFA

Doug, Rex, John and Melaine-

Please find attached comments on the ETCA, TSRS and FFA. Please note the following:

ETCA: SFRA version of ETCA dated 10/7/2010 together with a "red-line" version cast against the Navy version dated 25 June 2010

TSRS: SFRA version of TSRS dated 10/8/2010 together with a "red-line" version cast against the 9/8/2010 version

FFA: SFRA version of the FFA dated 10/8/2010 together with a "red-line" version cast against the Navy draft 3 September 2010.

.....
Andrea Bruss
Office of Economic and Workforce Development
1 Dr. Carlton B. Goodlett Place, Room 448 San Francisco, CA 94102
Direct: (415) 554-6661
Fax: (415) 554-4565
Andrea.Bruss@sfgov.org
www.oewd.org

~~(HPS.ETCA.Navy Clean Draft.25 Jun 10.doc)~~ **Navy Clean Draft, 25 Jun 2010**
SFRA 10/7/2010 COMMENTS TO
NAVY 25 JUNE 2010 VERSION

EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
AND
THE SAN FRANCISCO REDEVELOPMENT AGENCY
SAN FRANCISCO, CALIFORNIA

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**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
AND
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA
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**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
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**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
A N D
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

THIS EARLY TRANSFER COOPERATIVE AGREEMENT ("Agreement") is made by and between the **UNITED STATES OF AMERICA**, acting by and through Naval Facilities Engineering Command ("Navy") and the **SAN FRANCISCO REDEVELOPMENT AGENCY**, San Francisco, California ("SFRA") recognized as the local redevelopment authority by the Office of Economic Adjustment ("OEA") on behalf of the Secretary of Defense and also a local public authority legally empowered to enter into this Agreement. Hereinafter, the Navy and the SFRA are each sometimes referred to individually as a "Party" and collectively as the "Parties."

GENERAL PROVISIONS

The Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and, in accordance with various base closure statutory authorities, the Department of Defense ("DOD") closed and plans to dispose of real and personal property at those facilities. The Navy is authorized to dispose of real and personal property on Hunters Point Naval Shipyard ("HPNS"), to the City of San Francisco or to a local reuse organization approved by the City, in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-160). The SFRA is a local reuse organization approved by the City of San Francisco to accept conveyance of HPNS property in accordance with the authorities set out above.

The Parties did execute and enter into that certain *Conveyance Agreement Between the United States of America, Acting by and through the Secretary of the Navy, and the San Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated March 31, 2004 ("Conveyance Agreement").

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

completion of all remedial action necessary to protect human health and the environment provided that the property is suitable for transfer for the intended uses and the intended use is consistent with the protection of human health and the environment. Under this early transfer authority, the Navy intends to convey title to the portion of HPNS property known as the Area Covered by Environmental Services (hereinafter "ACES"), to the SFRA. The ACES is defined in Section 222 below and shown in Appendix 2. The SFRA assumes responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section 211 below) for the consideration set forth in this Agreement. In accordance with 42 U.S.C. 9620(h)(3)(C)(iii), after all response action necessary to protect human health and the environment with respect to any hazardous substances remaining on the ACES on the date of transfer has been taken, the Navy will deliver to the SFRA an appropriate document containing the CERCLA warranty that all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken.

Article I SCOPE AND PURPOSE

Section 101. Scope and Purpose of Agreement

The principal purpose of this Agreement is to facilitate early transfer and redevelopment by providing the vehicle under which the SFRA will perform the Environmental Services in the ACES in order to satisfy the covenant requirements of the "early transfer" provisions of Section 120(h)(3)(C)(iii) of CERCLA for the consideration specified herein. This Agreement is considered a Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section 2701(d)(1) and benefits both the Navy and the SFRA because it facilitates SFRA access to and control of the ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Section 220 below) and immediate reuse by allowing the SFRA to cause to be performed certain environmental remediation activities while simultaneously facilitating redevelopment as defined herein. In addition, early transfer will allow the Navy to convey title in compliance with CERCLA requirements at an earlier date than could otherwise be achieved.

The Navy is conveying HPNS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G to the SFRA pursuant to the Navy's early transfer authority. The Navy and the United States Environmental Protection Agency ("EPA") have issued Records of Decision ("RODs", see Section 207) for HPS Parcels B and G selecting remedial actions for responding to releases of CERCLA hazardous substances as provided by the Federal Facility Agreement ("FFA") entered into by the Navy and the Environmental Regulatory Agencies (as defined in Section 229 below) in 1991. The Navy is legally responsible for executing the remedial actions selected in those RODs as required by CERCLA, the National Oil and Hazardous Substances Contingency Plan ("NCP"), and the FFA.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

It is anticipated that the completion of remedial action required by the RODs will satisfy the covenant requirements of Section 120(h)(3)(C)(iii) of CERCLA.

Subject to the provisions of this Agreement, the Navy and SFRA hereby agree that SFRA shall assume the Navy's responsibility for and shall cause to be performed the Environmental Services (defined below in Section -xx-) that are required to complete remedial action required by the RODs and applicable Remedial Design reports within the ACES for Parcels B and G and that are necessary to comply with CERCLA and the NCP, achieve Regulatory Closure, and comply with Long Term Obligations within the ACES in accordance with the Technical Specifications and Requirement Statement ("TSRS") (Exhibit 9) subject to the receipt of funding from the Navy in an amount not to exceed the maximum funding obligation of _____.

The Navy and the Environmental Regulatory Agencies have entered into an FFA Amendment suspending the Navy's FFA obligations to implement remedial actions required by the RODs and applicable Remedial Design reports. The SFRA has agreed with the Environmental Regulatory Agencies to conduct these remedial actions pursuant to an Administrative Order on Consent ("AOC", see Section xx) entered into with the Environmental Regulatory Agencies. The FFA Amendment provides that the Navy will resume CERCLA responsibility for compliance with the FFA in the event of a Finding of Default as provided in the AOC or upon a termination of this Agreement pursuant to Sections 701 and 1003 below.

~~The scope of this Agreement does not include additional remedial action to address Uninsured Unknown Conditions (as defined in the TSRS) that may be required by Amendments or Explanations of Significant Differences ("ESDs") to the RODs except to the extent attributable to any negligence and misconduct of the SFRA. In the event that such additional remediation is required, the Parties agree to meet and confer to discuss a mutually agreeable solution.~~

~~The scope of this Agreement does not include Navy Retained Conditions ("NRC", see Section xx) or Ineligible Work (see Section xx). Nothing in this Agreement shall be construed as creating a legal obligation under this Agreement (contractual or otherwise) for either the Navy or SFRA to fund or perform remediation addressing either Navy Retained Conditions or ("NRCs, see Section xx), Special Exclusions (Section xx), or Ineligible Work (Section xx), nor shall this Agreement be construed to limit or otherwise effect any legal obligations of either the Navy or SFRA apart from this Agreement, except as specifically provided herein. No funds provided under Section 302(a) may be used by the SFRA to fund or perform either a NRCs, Special Exclusions or Ineligible Work. If the SFRA remediates an NRC or Special Exclusion or performs Ineligible Work either voluntarily or pursuant to the AOC or other enforcement order, the SFRA agrees that it they will do so at its their own cost and expense, subject to the provisions of Article III and Section 711.~~

Notwithstanding any other provisions of this Agreement, the Navy is not a party to,

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

bound by, or responsible for compliance with any of the provisions of the AOC including AOC provisions concerning NRCs or Special Exclusions. Nothing in this Agreement shall be construed as creating a Navy legal obligation to SFRA under this Agreement (contractual or otherwise) for the Navy to comply with either AOC or Amended FFA provisions regarding NRCs or Special Exclusions.

Article II DEFINITIONS

Section 201. Agreement

The term "Agreement" means this Early Transfer Cooperative Agreement.

Section 202. Navy's Representative

The term "Navy's Representative" for execution purposes is the Naval Facilities Engineering Command, which is responsible to the office of the Secretary of the Navy for environmental remediation within the ACES, or its successor.

Section 203. San Francisco Redevelopment Agency

The term San Francisco Redevelopment Agency or "SFRA" is the Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the HPNS by the OEA on behalf of the Secretary of Defense. The SFRA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis."

Section 204. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" or "HPNS" means that portion of the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 205. Administrative Order on Consent

The term "Administrative Order on Consent" or "AOC" means that certain signed agreement executed between the SFRA, HPS Development Co., LP, and the Environmental Regulatory Agencies dated XX- XX-XXXX.

Section 206. Navy-Retained Conditions

The term "Navy Retained Conditions" means Unexploded Ordnance (as defined

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 214). The term Navy Retained Conditions does not include Ineligible Work as defined in Section 218 of the ETCA.

The following defines "Navy Retained Conditions" or "NRCs" which are not considered to be within the scope of the Environmental Services covered by this Agreement. The SFRA is not responsible for conducting, investigating or remediating the following NRCs under this Agreement: (i) Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials; (ii) the performance of CERCLA five year reviews for years 2013 and 2018 for remedies selected in CERCLA RODs issued by the Navy; and (iii) activity identified as the responsibility of the Navy in the Amended FFA. The term "NRC" does not include Ineligible Work as defined in Section 218 below.

Section 207. CERCLA Records of Decision

The term "CERCLA Records of Decision" or "CERCLA RODs" means the CERCLA Record of Decision for Parcel B dated January 14, 2009, and the CERCLA Record of Decision for Parcel G dated February 18, 2009.

Section 208. Regulatory Closure

The term "Regulatory Closure" means Environmental Regulatory Agency approval, by issuance of one or more Certificates of Completion, or Remedial Action Completion Reports ("RACR") encompassing the entire ACES (or encompassing the portion of the ACES or particular condition with respect to which the term is used) pursuant to the procedures set forth in the AOC and, to the extent the Environmental Services includes activities not covered by the AOC, such as an Unknown Condition Discovered Outside the Course of Remediation involving a petroleum release, written Environmental Regulatory Agency approval that no further action is required for that condition.

The Term "Regulatory Closure" means Environmental Regulatory Agency approval of one or more Remedial Action Completion Reports (RACRs) throughout the ACES pursuant to procedures set forth in the AOC.

Section 209. Navy and Government

The terms "Navy" and "Government" are used interchangeably herein.

Section 210. Long-Term Obligations

The term "Long-Term Obligations" means any long-term review, monitoring, reporting and institutional control ("IC") and operation and maintenance requirements that are required to be performed after a RACR has been approved pursuant to the AOC including but not limited to requirements associated with or in furtherance of the CERCLA RODs, Remedial Design reports,

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

and Operation and Maintenance reports reviewed and approved pursuant to the FFA, and including providing existing records and reports for the Navy's preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five-year reviews thereafter. Long-Term Obligations do not include obligations attributable to NRCs or Special Exclusions.

Section 211. Environmental Services

The term "Environmental Services" means performance of the activities necessary to achieve Regulatory Closure and comply with Long-Term Obligations with respect to (i) Known Conditions and Unknown Conditions Discovered During the Course of Remediation even if the funds provided under this Agreement, and any insurance proceeds from the Environmental Insurance Policies, have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (ii) Unknown Conditions Discovered Outside the Course of Remediation, but only to the extent such activities are funded by the Environmental Insurance Policies or to the extent such funding is unavailable as a result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

The term "Environmental Services" does not include, except as specifically provided herein, the performance of any activities related to the following: Navy Retained Conditions; Ineligible Work; or Special Exclusions.

The term "Environmental Services" means environmental remediation activities required by this Agreement to address Known Conditions and Insured Unknown Conditions (as defined in the TSRS) and that are necessary to comply with ROD and applicable Remedial Design report requirements, obtain Regulatory Closure throughout the ACES, and comply with Long Term Obligations as provided in the TSRS.

Section 215. Radiological Materials *[Need to discuss further]*

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components that do not require special handling or special treatment as a result of the materials containing radionuclides, or are otherwise subject to regulatory standards that would be applied in the absence of such radiological materials.

Section 216. Environmental Insurance Policies

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The term "Environmental Insurance Policies" means the eEnvironmental Insurance insurance ("EI") policies which the SFRA or its Contractor procures shall bind subsequent to the execution of this Agreement by an insurance carrier that is rated () in accordance with the requirements as set forth below in Section 712.e. Prior to conveyance, the Navy and the SFRA shall have reviewed and approved the terms, conditions and insurer as set forth in and identified by the Environmental Insurance Policies.

Section 218. Ineligible Work

The term "Ineligible Work" means the performance of any or more of the following work:

a. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location and not previously demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering LBP from buildings and structures.

b. Cleanup of pesticides and herbicides applied in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors including, but not limited to, chlordane properly applied as a termiticide to presently existing wooden structures, their foundations, and underlying soils.

e. Management and off site disposal of contaminated soil or solid waste excavated or generated during the course of Redevelopment Activity within any portion of the ACES for which all appropriate Environmental Regulatory Agencies have previously approved Regulatory Closure following: (1) the installation of a cap/cover remedial action by the SFRA, or (2) issuance of an approved RACR following installation of a cap/cover remedial action by the Navy.

d.c. Additional remediation necessary to implement a change in land use from the land uses set forth in the 1997 Reuse Plan.

e.d. Management and disposal of construction and demolition debris except to the extent such debris is generated in the course of an activity required by the TSRS conducting the Environmental Services, such as the demolition of hardscape necessary to install a monitoring well.

e. Clean up of contaminants within existing buildings and structures, that have not been released into the environment; except for removal of liquids, solids, gases, sediments, and/or sludges from and including oil/water separators and other equipment and containment

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

vessels within or beneath structures to the extent the equipment and vessels ~~could were~~ not ~~have been~~ reasonably discovered by visual inspection during a pre-conveyance walk-through in which both parties participated.

~~f. — f.~~

Any activity, ~~including management and offsite disposal of excavated contaminated soil or solid waste,~~ associated with disturbing or altering a cover, cap or other component of an environmental remedy installed pursuant to the AOC, except to the extent such disturbance or alternation is necessary to comply with the AOC ~~as a result of remedy failure to address an environmental condition other than a condition that addressed by the disturbed or altered remedy component was designed to address.~~

~~g.~~

~~h.g.~~ Non-cleanup environmental compliance activities relating to redevelopment/construction following conveyance (e.g., compliance with air quality permit requirements for control of fugitive dust emissions that are not contaminated with hazardous substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES") stormwater discharge permit requirements regulating excavation/disturbance of soil that is not contaminated with hazardous substances or petroleum).

~~i.h.~~ Any other work or activity that is not related to: ~~(1) achieving "Regulatory Closure" for releases of hazardous substances or petroleum within the ACES, or (2) performing associated "Long-term Obligations."~~ the performance of the Environmental Services.

~~j.i.~~ All Regulatory Enforcement Activities.

~~k.j.~~ Cleanup that is required as a result of a violation of: (i) use restrictions by the SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed covenant or IC applicable to the ACES.

~~l. — k.~~ Cleanup arising from the failure of the SFRA, its successors and assigns, to operate or maintain a remedy as required by the PCAP or USEPA through the CERCLA RODs, AOC, Land Use Control Remedial Design Reports ("LUC RD"), Risk Management Plan ("RMP") and/or Operation and Maintenance Plan ("OMP").

Section 220. Reuse Plan

The term "Reuse Plan" means that certain Redevelopment Plan for the HPNS, approved by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997, as such Redevelopment Plan has been amended as of the date of the execution of this Agreement by the following documents: (i) XXXX and (ii) XXXX, all in accordance with the California

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Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).

Section 221. ~~__-(Reserved)??~~

~~Reserved??~~

Section 222. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2~~--~~, and specifically excludes IR Sites 7/18 and the radiologically-impacted area.

Section 223. ~~__~~—Unexploded Ordnance/Munitions or Explosives of Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

Section 224. Military Munitions

The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

Section 225. Technical Specifications and Requirement Statement

The term "Technical Specifications and Requirement Statement" or "TSRS" means the statement of work included in Appendix 9.

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 226. Regulatory Oversight

The term "Regulatory Oversight" includes ~~the following services provided all activities performed~~ by EPA, DTSC, and RWQCB ~~reasonably necessary to oversee the implementation of the AOC, other than Regulatory Enforcement Activities, which are considered allowable costs under this Agreement.~~

~~a. Technical review of documents or data;~~

~~b. Identification and explanation of state applicable or relevant and appropriate requirements (ARARs);~~

~~c. Site visits other than enforcement inspections;~~

~~d. Administration of this Agreement, technical review and comment on all documents and data regarding DoD prioritization of sites;~~

~~e. Determination of scope and applicability of agreements [elaborate], excluding any litigation costs against the U.S. Government;~~

~~f. Independent quality assurance/quality control samples not to exceed ten percent of the samples collected.~~

Section 227. Regulatory Enforcement Activities

~~The term "Regulatory Enforcement Activities" means any In accordance with 10 U.S.C. 2701(d)(3), regulatory enforcement costs that are not allowable costs under 10 U.S.C. 2701(d)(3), are not allowable costs under this Agreement. The term "Regulatory Enforcement Activities" including es:~~

~~a. Activities associated with the City of San Francisco taking, or preparing to take, enforcement actions against third parties for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety or alleged violations of land use restrictions set forth in quitclaim deed(s) or in a Covenant to Restrict the Use of Property ("CRUP"), as hereinafter defined, on the ACES; or~~

~~b. Activities activities associated with EPA, DTSC, RWQCB, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking, or preparing to take, enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.~~

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Section 228. Navy's Grants Officer

The term "Navy's Grants Officer" means the Director of Acquisition, NAVFACENGCOM, ~~and is the only authorized Government official who can make any modifications and obligate funds under this Agreement.~~

Section 229. Environmental Regulatory Agency or Agencies

The term "Environmental Regulatory Agency or Agencies" means the United States Environmental Protection Agency ("USEPA"), the California Department of Toxic Substances Control ("DTSC"), and the San Francisco Bay Water Quality Control Board ("RWQCB").

Section 230. Covenant to Restrict the Use of Property

The term "Covenant to Restrict the Use of Property" or "CRUP" means that certain document required by the CERCLA RODs that identifies the environmental covenants and restrictions that shall apply to the ACES.

Section 231. Amended Federal Facilities Agreement

The term "Amended Federal Facilities Agreement" or "Amended FFA" means that certain document executed by the Navy, USEPA, DTSC, and RWQCB dated _____, whereby the parties to the original Federal Facilities Agreement for the HPNS dated January 22, 1992 ("FFA"), amended such FFA.

Section 232. ~~Petroleum Corrective Action Plans [Delete this section if all PCAP work is completed prior to transfer]~~

~~The term "Petroleum Corrective Action Plans" or "PCAPs" means the Petroleum Corrective Action Plan entered into among SFRA, the Water Board and DTSC effective concurrent with the Effective Date and addressing petroleum releases associated with the ACES that are not otherwise addressed within the CERCLA RODs. [Reserved – PCAP definition, and references in operative language to be reinserted if PCAP work is not completed by Navy before execution.]~~

Section 233. ~~Remedial Action Closeout Report~~

~~The term "Remedial Action Closeout Report" or "RACR" means (Insert exact definition from AOC).~~

Section 234. ~~Certificate of Completion~~

~~The term "Certificate of Completion" means (Insert exact definition from AOC).~~

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Section 235. –Environmental Conditions

The term “Environmental Condition(s)” means a discharge, release, or threatened discharge or release into the environment of a hazardous substance, waste, oil, or petroleum product within the scope of any of the following:

- a. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601 et seq.;
- b. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.;
- c. California Hazardous Waste Control Act (California Health and Safety Code Sections §25100 et seq.);
- d. California Hazardous Substances Account Act (California Health and Safety Code Sections §25300 et seq.);
- e. Porter-Cologne Water Quality Control Act (California Water Code §13000 et seq.);
- f. Or similar federal or state environmental law.

Section 236 –Known Condition(s)

The term “Known Condition” means an Environmental Condition identified in the CERCLA RODs as requiring remedial action of one or more specified chemicals of concern in a specified medium (e.g., soil or groundwater) at one or more specified Installation Restoration (IR) site or other specified location.

Section 237 –Navy Remedy Failure

The term “Navy Remedy Failure” means any circumstance, not due to negligence by SFRA, where a remedy selected in the CERCLA RODs or subsequent CERCLA decision document issued by the Navy has been implemented by SFRA in accordance with the RODs and approved remedial design documents, but is determined by EPA not to have achieved the ROD’s remedial action objectives. “Navy Remedy Failure” does not include volatile organic compound (VOC) vapor migration and accumulation caused by redevelopment activities.

Section 238. – Navy Retained Conditions

The term “Navy Retained Conditions” means Unexploded Ordnance (as defined in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 214). The term Navy Retained Conditions does not include Ineligible Work as defined in Section 218 of the ETCA.

Section 239. –Special Exclusions.

The term “Special Exclusions” means any of the following:

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a. Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the Parcels B and G CERCLA RODs, except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:

1. The negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations;

2. Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Navy Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in paragraphs 2 through 7 of this Section;

b. Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.

c. Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.

d. Any activity and associated cost identified in the Amended Federal Facility Agreement (FFA) as a "Navy Obligation" or otherwise identified as the responsibility of the Navy, (Navy Note: Subject to further review and reconsideration as FFA amendment requirements are negotiated).

e. The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the CERCLA RODs issued by the Navy.

f. Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

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g. (Place holder for any additional exclusions in the insurance policies mutually agreed by Navy and SFRA).

Section 240. --Unknown Conditions Discovered During the Course of Remediation

The term "Unknown Conditions Discovered During the Course of Remediation" means Environmental Conditions that are discovered in the course of implementing the requirements of the CERCLA RODs in a portion of the ACES that has not achieved Regulatory Closure, and are not Known Conditions, Special Exclusions, or Navy Retained Conditions.--

Section 241. --Unknown Conditions Discovered Outside the Course of Remediation

The term "Unknown Conditions Discovered Outside the Course of Remediation" means Environmental Conditions other than Known Conditions and Unknown Conditions Discovered During the Course of Remediation--

Article III OBLIGATIONS OF THE PARTIES

Section 301. Obligations of the SFRA

In consideration of the Navy's agreement to pay the SFRA for allowable costs in the amount specified in Section 302 below, the terms of this Agreement, the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and Budget ("OMB") Circulars, the SFRA ~~assumes responsibility for performing the Environmental Services. Subject to the provisions of Sections 302 hereof, the SFRA agrees that it shall perform and complete or cause to be performed and completed the necessary Environmental Services.~~

~~to address Known Conditions and Insured Unknown Conditions as defined and provided in the TSRS. The Insured Scope of Work and Insured Conditions as defined herein n.~~

a. The SFRA shall complete ~~the~~ Environmental Services ~~consistent with for Known Conditions and Insured Unknown Conditions (as defined in the TSRS) that are necessary to: (1) comply with the RODs and applicable Remedial Design reports, (2) comply with AOC requirements, (3) achieve Regulatory Closure, and (4) comply with Long Term Obligations as provided in the TSRS. The SFRA shall conduct and bear the cost of such services addressing Known Conditions even if such costs exceed the amount of ETCA funds provided and any insurance proceeds.~~ If the SFRA transfers a portion of the ACES to another party, SFRA shall

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1 remain responsible for performing the Environmental Services on that portion. The SFRA shall
2 ensure that the initial cap/covers required by the CERCLA RODs shall be installed throughout
3 the ACES before transferring its final property interest within the ACES to a third party or no
4 later than seven (7) years after the date of execution of this Agreement by both parties,
5 whichever shall occur first.

6
7 b. The SFRA's obligation to perform Environmental Services is expressly
8 conditioned upon the Navy providing funding for performing the Environmental Services in
9 accordance with Section 302 hereof. However, to the extent that the Navy pays a portion of
10 the funding set forth in Section 302 hereof, but fails to pay the full amount set forth in that
11 Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the
12 SFRA's obligations shall be limited to only that portion of Environmental Services which have
13 been performed by use of the funds actually provided by the Navy or the insurer as set forth in
14 Section 712.b hereof. Any dispute with respect to delineating the portion of the
15 Environmental Services performed with the use of such partial funding shall be subject to
16 dispute resolution pursuant to Section 1001 hereof. The SFRA shall make reasonable
17 progress toward performing Environmental Services.

18
19 c. In the event this Agreement terminates pursuant to Section 1003 below, the
20 SFRA shall return all unused grant funds to the Navy or cause to be returned to the Navy any
21 funds held by the SFRA or Escrow Agent not otherwise committed for allowable costs of
22 payment for Environmental Services performed in accordance with this Agreement. [copied
23 from 1003(e)(6).

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24
25 d. The SFRA shall cause the performance of the Environmental Services in a
26 manner that will not unreasonably delay any action that the Navy determines that it may
27 undertake in order to address NRCs or Special Exclusions.

28
29 e. The SFRA shall indemnify the Navy pursuant to the terms of Section 711.0
30 hereof.

31
32 f. The SFRA shall conduct audits and shall provide performance and financial
33 reports to the Navy as follows:

34
35 (1) In accordance with the provisions contained in 32 CFR 33.26, the SFRA is
36 responsible for obtaining annual audits in accordance with the Single Audit Act Amendments of
37 1996 (31 USC 7501-7507) and revised OMB Circular A133, "Audits of States, Local
38 Governments, and Non-Profit Organizations." The audits shall be made by an independent
39 auditor in accordance with generally accepted government auditing standards covering financial
40 audits. The costs of audits made in accordance with this section are allowable costs under this
41 Agreement.

42
43 (2) The SFRA is responsible for assuring compliance with applicable

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Federal requirements and that performance goals are being achieved. In accordance with 32 CFR 33.40, the SFRA shall submit timely performance reports to the Navy. All reports shall be submitted to the Navy on the same schedule as the SFRA, its developer, or its contractors submit such information to the insurance provider.

(3) In accordance with 32 CFR 33.41, the SFRA shall submit timely financial status reports to the Navy. All reports shall be submitted to the Navy on the same schedule as the SFRA, its developer, or its contractors submit such information to the insurance provider.

g. In the event that the SFRA is served with a complaint or written notice by an Environmental Regulatory Agency, or other third parties, that suggests that an action is necessary related to an Environmental Condition at or affecting the ACES under Section 101 or 302 of this Agreement and for which the SFRA is not responsible, the SFRA shall provide the Navy Notice and a copy of all applicable documents as soon as possible but no later than seven (7) calendar days following such receipt.

h. The SFRA shall notify the Navy within thirty (30) calendar days of SFRA discovering, or receiving actual notice of, any Environmental Condition at or affecting the ACES or that the SFRA discovers, that suggests that an action is necessary under Section 101 or 302 of this Agreement and for which the SFRA is not responsible. The exception to this duty is that the SFRA shall notify the Navy of the discovery of any UXO, biological warfare agents, or radiological or chemical warfare agents within twenty-four (24) hours of any such discovery. If the Navy responds to this notice by asserting that the Environmental Condition that is the subject of the notice provided under this paragraph 301(h) or paragraph 301(g) above is within the Scope of the Environmental Services, the Parties shall, within a reasonable time after such notification response, meet and confer to attempt to reach a mutually agreeable solution to address the circumstances, including, if appropriate agreeing to regarding the scope of, and allocation of costs for, any initial investigation that may be necessary to ascertain whether the discovery is properly categorized as a NRC or as part of within the scope of Environmental Services, to be performed by the SFRA. To the extent the AOC provides for a process for involving the Environmental Regulatory Agencies in resolving a dispute regarding whether an Environmental Condition is with the scope of the Environmental Services, the parties shall in good faith engage in that process. If a mutually agreeable solution to address the circumstances is not reached within a reasonable period of time after commencement of discussions between the SFRA and the Navy and, if applicable the Environmental Regulatory Agencies, the Parties reserve the right to initiate the dispute resolution process as described in Section 1001 of this Agreement.

i. Notwithstanding the preceding Section 301.h, the SFRA shall have the right, but not the duty, to take or cause to be taken the following actions within the ACES with respect to NRCs any Environmental Condition that is not within the scope of the Environmental Services:

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(1) **Investigation Activities.** Other than a condition subject to emergency ~~a~~Action, if the SFRA discovers a condition it reasonably believes is a NRC~~an Environmental Condition that is not within the scope of the Environmental Services~~, the SFRA shall use its reasonable efforts to avoid incurring costs or obligations with respect to the Environmental Cecondition~~by seeking to further ascertain the existence, nature, character and extent of conditions that may constitute a NRC. Nothing in this Agreement shall be construed to authorize the SFRA to seek reimbursement from the Navy or as a Navy promise or obligation to provide such reimbursement to the SFRA for costs solely associated with the initial investigation needed to ascertain the existence, nature, character and extent of the condition.~~ If ~~the initial investigation demonstrates that the condition at issue is a NRC and if~~, despite using commercially reasonable efforts to avoid incurring such costs, the SFRA incurs costs or obligations with respect to a NRC, the Environmental Condition, the SFRA may seek reimbursement from the Navy for the reasonable investigation costs, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001.

(2) **Emergency Actions.** The SFRA may take immediate action to address an imminent threat to human health or the environment. The SFRA may seek reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001, for the reasonable response costs related to such emergency action regarding a Navy Retained Condition where notification cannot practicably be provided to the Navy before such action needed to be taken OR notification is provided to the Navy before such action and the Navy agrees to permit the SFRA to take such emergency action under terms agreed to by the Parties.

(3) **Notice.** To the extent that the SFRA takes or causes to be taken actions in accordance with Section 301.i(1) and (2), the SFRA shall notify the Navy of such action as soon as practicable but no later than fifteen (15) business days after the SFRA takes or causes to be taken any such action. If the Navy disputes an SFRA action taken under Section 301.i(1) and (2), the Navy may initiate dispute resolution procedures under Section 1001.

j. The SFRA shall provide to the Navy all information obtained or developed by the SFRA with respect to any NRCs~~Environmental Condition that is not within the Scope of the Environmental Services and~~ that the SFRA discovers.

k. The SFRA shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein.

l. The SFRA shall conduct annual site inspections pursuant to the LUC RD and CERCLA RODs, AOC, CRUP, and deeds and shall assure preparation of any applicable compliance monitoring reports and certificates associated with environmental land use restrictions on the ACES.. [NOTE: Subject to SFRA preparing a proposal for the scope and cost

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[of IC monitoring and enforcement\]](#)

Section 302. Obligations of the Navy

a. The maximum funding obligation of the Navy to the SFRA for performing the Environmental Services during the term of this Agreement is \$_____, which shall be paid in one advance payment which shall be made within -- (--) days after recordation of the deed conveying title to the Early Transfer Property from the Navy to the SFRA. The Navy's obligation to pay hereunder is subject to the availability of appropriated funds and this shall not be interpreted to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

b. Notwithstanding the provisions of Section 302.a. above, prior to payment being made to the SFRA, the terms, conditions and insurer, as required by Section 712 below, and as set forth in a final indication of the Environmental Insurance Policies, must be reviewed and approved by the Navy and the SFRA, which approval shall not be unreasonably withheld.

~~(c.)~~—Within a reasonable time after the SFRA has provided the Navy with proper documentation establishing that Regulatory Closure has been obtained for the ACES, or portions of the ACES, as set forth in the AOC, and a written request from the SFRA to issue the appropriate CERCLA warranty for the ACES, or such portions of the ACES, the Navy shall issue to the SFRA the warranty required under CERCLA, Section 120(h)(3)(C)(iii). The SFRA shall bear the costs of preparing any new legal descriptions for the CERCLA warranty to be recorded.

d. The Navy shall comply with the procedures and terms set forth in Section 301 with respect to discovery of ~~potential Pollution Conditions that may be NRCs.~~[Environmental Conditions that are not within the scope of the Environmental Services.](#)

e. Any Navy liability for the death of or injury to any person, or the loss of or damage to any property, caused by Navy use of the ACES shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended), or as otherwise provided by law.

[f. The Navy shall cause the performance of any action that the Navy determines that it may undertake in order to address NRCs or Special Exclusions in a manner that will not unreasonably delay or interfere with the SFRA's performance of the Environmental Services.](#)

Article IV FUNDING LIMITATION AND BUDGETING

Section 401. Navy's Funding Limitation

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[4832-1251-0471.1](#)

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The Maximum Navy Funding Obligation for the Environmental Services to be performed by the SFRA under this Agreement is \$ _____. Except as may otherwise be provided in Section 302 above, the Navy will not pay any Environmental Service costs that exceed the amount described in Section 302.a. above. The Navy's obligation to pay any costs hereunder is subject to the availability of appropriated funds. Nothing in this Agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The SFRA incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the SFRA's ability to seek reimbursement for any additional costs, or to negotiate any additional amounts to be paid, do not create a Navy obligation to pay such costs or amounts in excess of the Maximum Navy Funding Obligation.

Notwithstanding any other terms herein, this Agreement is not intended to mean and shall not be interpreted to obligate the Navy to pay any amount to the SFRA in excess of the Maximum Navy Funding Obligation or to perform any remedial, response or other environmental action. The obligation, if any, to perform such remedial, response, or other environmental action shall be governed solely by applicable law. However, nothing herein precludes the Parties from entering into agreements to address other Navy obligations or activities.

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Article V **PAYMENT SCHEDULE**

Section 501. General

Subject to the Availability of funds, the SFRA shall be paid in accordance with Section 302 hereof.

Section 502. Payments

a. The amount provided by the Navy is an advance payment to be made to the SFRA. Such payment shall, upon execution by all Parties to this Agreement, be deposited into an interest bearing escrow account pending transfer of the advance payment to the SFRA in accordance with the Escrow Instructions set forth in Appendix --. Payment to the SFRA shall be made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:

- (1) The SFRA shall maintain or demonstrate the willingness and ability to

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

maintain procedures to minimize the time elapsing between the transfer of the funds from the escrow account to the SFRA and their disbursement by the SFRA to an independent third party payee.

(2) Within a reasonable period of time after receiving the advance payment from the escrow account, the SFRA shall deposit the funds with an independent third party payee . Such independent third party payee shall be responsible for making all payments to a subsequent transferee and/or environmental contractor(s), with whom the SFRA enters into an agreement to perform the Environmental Services or to supervise the performance of the Environmental Services. Funds shall be considered disbursed by the SFRA when the following has occurred:

(A). The SFRA does not retain possession of the funds;

(B). The SFRA cannot get the funds back upon demand (this does not include allowable costs incurred by the SFRA for which the SFRA requests proper reimbursement from the independent third party payee);

(C). The independent third party payee is an independent stakeholder from the SFRA and the party or parties with whom the SFRA enters into an agreement to perform the Environmental Services or supervise the performance of the Environmental Services and not the agent of the SFRA;

(D). The SFRA receives something in exchange for the transfer of funds to the independent third party payee, such as a contractual promise to hold the funds and make payments in accordance with specified procedures.

(3) Any agreement by the SFRA with an independent third party payee must also include the above provisions and satisfy the requirements of 32 CFR §33.21(c).

(4) Interest. Any interest earned on the advance payment while in the escrow account pending transfer to the SFRA and any interest earned on the advance payment by the SFRA prior to the disbursement of those funds by the SFRA to the independent third party payee must be returned to the Navy in accordance with 32 CFR §33.21(h)(2)(i). However, any interest earned on those funds after disbursement from the SFRA to the independent third party payee in accordance with Section 502.a. (2)(A)-(D) are considered funds to be utilized for the purposes of this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Article VI PAYMENT

Section 601. RESERVED

Section 602. Relation to Prompt Payment Act.

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, et seq.). Accordingly, the Navy is not liable to the SFRA for interest on any untimely payments under this Agreement.

Section 603. Direct Navy Payment of SFRA Obligations

The Navy is not in privity with, and shall not directly pay any SFRA contractors, employees, vendors, or creditors for any costs incurred by the SFRA under this Agreement. The Navy assumes no liability for any of the SFRA's contractual obligations that may result from any SFRA performance of duties under this Agreement. The Navy assumes no liability hereunder for any SFRA contractual obligations to any third parties for any reason. The SFRA hereby agrees to defend and hold the Navy harmless from any such liabilities.

Article VII GENERAL PROVISIONS

Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. The requirements and provisions described in Subsections 701.a and 701.b below shall survive such termination, but only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Section 401 above:

a. SFRA requirements to ~~maintain compliance with Regulatory Closure and any perform~~ applicable Long-Term Obligations, ~~including but not limited to those required under the CERCLA RODs, PCAPs, and AOC;~~

~~a.b.~~ The SFRA's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and Section 715.

Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

With Regard to the Navy:

Director, Base Realignment and Closure Management Office
Department of the Navy
1455 Frazee Road, Suite 900
San Diego, CA 92108

With a copy to:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

With Regard to the SFRA:

San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103
Attn: _____

With a copy to:

Celena Chen, Senior Attorney
San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

With a copy to:

Elaine Warren, Assistant City Attorney
Office of City Attorney
City of San Francisco City Hall
Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

With a copy to:

George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Section 708. Conflict of Interest

The SFRA shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

Section 709. Access to and Retention of Records

The SFRA shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other Federal Government agency access and the right to examine all SFRA records, books, papers, and documents related to the SFRA's performance under this

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Agreement and any additional records, book papers and documents that are otherwise required to be retained under the AOC. This includes all such records in automated forms ("Records") that are within the SFRA's custody or control, and that relate to its performance under this Agreement. This right of access excludes any attorney-client communications, attorney work product, or any other legally privileged documents. The SFRA shall retain required records intact in their original form, if not the original documents, or in another form if the Navy approves. Such approval shall not be unreasonably withheld. SFRA record retention requirements shall extend for at least three (3) years following the completion or the termination of this Agreement. The SFRA shall allow the Navy access to the SFRA's records during normal business hours. The Navy will give the SFRA seventy-two (72) hours prior notice of its intention to examine the SFRA's records, unless the Navy reasonably determines that more immediate entry is required by special circumstances. Any such entry shall not give rise to any claim or cause of action against the Navy by the SFRA or any officer, agent, employee, or contractor thereof.

Section 710. Change of Circumstances

Each Party will promptly notify the other Party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such Party's ability to perform this Agreement.

Section 711. Liability and Indemnity, Waiver and Release

a. The SFRA's Obligations and Limited Waiver of Statutory Rights

(1) In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement, the SFRA agrees that it shall, upon receipt of the payment of the grant award, indemnify and hold the Navy harmless for any of the following, provided, however the SFRA's indemnification obligations under this subparagraph (a)(1) shall in no event apply to NRCs ~~which are Uninsured Conditions or Special Exclusions~~ except to the extent that the NRCs or Special Exclusions are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest:

(A) any claims incurred in responding to Eenvironmental Cconditions in the ACES and which are within the scope of Environmental Services; or address otherwise any "Ineligible Work" ~~as set forth in Section 218~~ performed by or on behalf of the SFRA;

(B) Costs for Regulatory Oversight ~~oversight costs for any remedy implemented by the SFRA to the extent that the SFRA is required to install such remedy to achieve Regulatory Closure under this Agreement;~~

(C) all claims for personal injury or property damage to the extent caused by the SFRA or its contractors in the course of performing the Environmental Services;

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(D) all natural resource damage claims pursuant to 42 U.S.C. Section 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such damages were caused, or contributed to, by the negligent or wrongful actions of the SFRA, its contractors or its successors in interest;

(E) all costs arising from the performance of the Environmental Services which SFRA performs or causes to be performed;

(F) all costs of additional remediation required on or within the ACES as a result of a change in land use from that upon which the initial remedial action selection decision was based when Regulatory Closure was completed;

(G) all costs associated with the correction of any failure of any Navy-selected remedy implemented by the SFRA, but only to the extent such costs are directly attributable to the poor workmanship or negligence of the SFRA or its contractors in the performance of said implementation;

(H) all costs arising from the correction of any failure of any remedy both selected and implemented by the SFRA; and

(I) all costs arising from or associated with claims addressed in the Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(6) below.

(2) With regard to the ACES, the Parties agree that the SFRA has provided financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C. Section 9620(h)(3)(C)(ii).

(3) Except as otherwise expressly provided by this Agreement, this Agreement shall not be construed to limit, expand or otherwise affect any right that the SFRA may have, in the absence of this Agreement, to take legal action to require the Navy to act with respect to NRCs or Special Exclusions, or to seek damages resulting from the Navy's performance or failure to perform any actions with respect to NRCs or Special Exclusions. Except as otherwise expressly provided by this Agreement, this Agreement shall also not be construed to limit, expand or otherwise affect any right that the Navy may have, in the absence of this Agreement, to take legal action against the SFRA.

(4) Nothing in this Section creates rights of any kind in any person or entity other than the Navy and the SFRA.

(5) The SFRA and the Navy agree that the Environmental Services to be caused to be performed by the SFRA in accordance with the terms of this Agreement does not include any work relating to, nor is the SFRA responsible for indemnification of the Navy for

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

any work related to, NRCs or Special Exclusions except to the extent that the NRCs or Special Exclusions are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest.

(6) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past, present, and future claims or causes of action ("claims"), the SFRA, upon receipt of payment, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:

(A) Any cleanup, response or corrective action associated with or as a result of environmental conditions in the ACES and within the scope of Environmental Services, ~~for Known Conditions and Insured Unknown Conditions and;~~

(B) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to NRCs or Special Exclusions; and

(C) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a CERCLA ROD except to the extent such disturbance or alteration is necessary to comply with the AOC as a result of potential or actual remedy failure or as a result of addressing Environmental Conditions other than those addressed by the cover, cap, or other environmental remedy. In no event shall SFRA be entitled to payment for claims, costs or damages for work or costs incurred pursuant to this Agreement for which it has already been paid pursuant to the Agreement.

(D) Any personal injury or property damage to the extent that it did not occur prior to the date of execution of this agreement by both parties.

Section 712. Liability and Insurance

a. The SFRA shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.

b. The SFRA will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If a worker's compensation or similar insurance policy is obtained, any such insurance policy will provide a waiver of subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party rights of action that the

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SFRA may have against the Navy.

c. General Liability Policy Provisions: All general liability insurance which the SFRA carries or maintains, or causes to be carried or maintained, under this Section 712 will be in such form, for such amounts, for such periods of time and with such insurers as the Navy may reasonably approve. Such Navy approval shall not be unreasonably withheld or delayed. All policies issued for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after the Navy receives written notice thereof. Any such policy shall also provide a waiver of subrogation of any claims against the Navy, and its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to a third party any rights of action which the SFRA may have against the Navy. The Navy acknowledges and accepts the SFRA's self-insurance coverage for general liability, worker's compensation, or for any similar coverage.

d. Delivery of Policies: The SFRA will provide the Navy with a certificate of insurance or statement of self insurance evidencing the insurance required for the SFRA. At least thirty (30) days before any such policy expires, the SFRA shall also deliver to the Navy a certificate of insurance evidencing each renewal policy covering the same risks.

e. Environmental Insurance Requirements. Prior to the conveyance of any portion of the ACES to SFRA, SFRA shall procure environmental insurance policies approved by the Navy, which approval shall not be unreasonably withheld, providing "cost cap" or "stop loss" coverage for cost overruns associated with implementing the work required by the CERCLA RODs and further providing pollution legal liability or similar coverage, to the extent available, for ~~Pollution-Environmental~~ Conditions not addressed by the CERCLA RODs and for third party liability claims associated with ~~Environmental Pollution~~ Conditions.

Section 713. Reports

To assure that the Navy will receive from the SFRA the appropriate documentation necessary for the Navy to execute the CERCLA covenant, the Navy may request that the SFRA provide additional information concerning the environmental condition of the ACES reasonably necessary to enable the Navy to execute the CERCLA covenant. As soon as possible after any such request is made, if the SFRA can reasonably obtain and release such information, the SFRA shall provide the Navy access to any documents containing such requested information. In any event, the SFRA agrees to provide the Navy such access within ten (10) business days of the Navy's information request.

Section 714. Officials Not to Benefit

The SFRA acknowledges that no member or delegate to the United States Congress, or Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive any benefit that may arise therefrom.

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Section 715. Representations

a. The Navy represents that:

(1) it is fully authorized to enter into this Agreement;

(2) the SFRA may rely on the data provided to the SFRA or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and

(3) the information provided to the SFRA by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

b. The SFRA represents that:

(1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and,

(2) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act, and,

(3) any provision of this Agreement that states or implies that the Navy will reimburse the SFRA for any costs incurred, or that the Navy will perform any actions with respect to NRCs or Special Exclusions, are wholly subject to the Anti-Deficiency Act.

Section 716. Excess Funds

Funds, as provided for in Section 401 and Section 502 above, are only to be expended for the purposes for which they were provided for under the terms of this Agreement. In accordance with the procedures outlined in 32 CFR 33.50, any funds paid to the SFRA that remain unencumbered for allowable costs, after all regulatory approvals have been obtained and the CERCLA warranty has been issued by the Navy, are funds which may be determined to be excess by the Navy and not authorized to be retained by the SFRA and upon written demand by the Navy, the SFRA must immediately refund to the Navy those excess funds.

Article VIII APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program.

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Accordingly, as it may affect the rights, remedies, and obligations of the United States, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, those authorities will govern.

Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

A r t i c l e I X PROCUREMENT

Section 901. SFRA Contracts

The SFRA's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The SFRA must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

Section 902. Preference for Local Residents

a. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

b. Definition. In this section, the term "base closure law" means the following:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(2) The Defense Base Closure and Realignment Act of 1990, as amended (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

c. Applicability - Any preference given under subsection (a) shall apply only to contracts entered into after the base closure law was enacted.

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
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**Article X
TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION**

Section 1001. Dispute Resolution

a. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.

b. A dispute shall be considered to have arisen when one Party sends the other Party written notice of such dispute. Such written notice will include, to the extent available, all of the following information: the amount of monetary relief claimed or the nature of other relief requested; the basis for such relief, and; any documents or other evidence pertinent to the claim.

c. If a dispute arises under this Agreement, the Parties agree to attempt to resolve the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days after a notice of dispute is received. Should staff-level discussions not resolve the dispute within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to elevate the dispute to designated mid-level management. Mid-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties agree to then raise the issue with their respective senior-level management. Senior -level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to determine the person(s) to represent it at any meeting convened under this section.

d. If the dispute cannot be resolved after exhausting the remedies under Section 1001c. above, the dispute shall be appealed to the Director of the Base Realignment and Closure Office at the address indicated in Section 707 above. Such appeal must be written, and contain all of the documentation and arguments necessary for a decision. The Director shall render a decision in a timely manner. If the SFRA disagrees with the Director's decision, the SFRA may, by providing notice to the other Party, pursue whatever remedies that the SFRA may have available at law or in equity.

e. To the extent that there is a conflict between the Dispute Resolution provisions or process set forth herein and any dispute resolution provisions or process contained in the Amended FFA, the dispute resolution provisions and process of the Amended FFA shall control.

Section 1002. Enforcement

Either party may enforce this Agreement according to its terms. Without limiting either

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

party's enforcement rights, in accordance with the terms of 32 CFR Section 33.43, Enforcement, for noncompliance of Grantee or subgrantee shall include:

- a. Temporarily withholding cash payments pending correction of the deficiency by the SFRA or Sub-grantee or more severe enforcement action by the awarding agency;
- b. Disallowing (denying both use of funds and matching credit for) all or part of the cost of the activity or action that is not in compliance;
- c. Wholly or partly suspending or terminating the current award for the SFRA's or the Sub-grantee's program. Any award termination will be conducted under Section 1003 below.
- d. Withholding further awards under this Agreement; and
- e. Taking other remedies that may be legally available.

Section 1003. Termination

a. This Agreement may terminate by its own terms under Section 701 above, or by a party under this Section 1003.

b. Reserved.

c. Reserved.

d. If a Party materially breaches this Agreement, the non-breaching party, to preserve its right to terminate, must provide the breaching party with a notice of intent to terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has expired. The existence of a material breach shall be finally determined under the dispute resolution procedures specified in Section 1001 above. Notwithstanding anything to the contrary in this Section 1003.d, the breaching party shall have ten (10) days to cure a breach that arises from any failure to make a required payment under this Agreement.

e. If this Agreement is terminated for reasons other than those set forth in Section 701 above, the SFRA shall immediately:

(1) Stop work;

(2) Place no further subcontracts or orders (referred to as subcontracts in this

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

clause) for materials, services, or facilities;

(3) Terminate all subcontracts;

(4) With approval or ratification to the extent required by the Navy, settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts; any such approval or ratification will be final;

(5) Take any action that may be necessary to protect human health or the environment against imminent and substantial endangerment thereto, or to protect and preserve any Navy-owned property at the ACES, as the Grant Officer may direct; and

(6) Return or cause to be returned to the Navy any funds held by the SFRA or the Escrow Agent not otherwise committed for allowable costs of payment for Environmental Services performed in accordance with this Agreement.

The SFRA agrees to insert such provisions in its contracts, and to require that such provisions be placed in any subsequent subcontracts between the SFRA's contractors and their subcontractors, so as to effect the provisions above.

f. If this Agreement is terminated under this Section 1003, the status of the parties with respect to Eenvironmental Cconditions at the ACES shall revert to as the status that existed immediately preceding the effective date of this Agreement.

g. A party's right to terminate, and any determination of funds available for reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in Section 1001 above.

Section 1004. Effects of Suspension and Termination

a. Except for allowable costs in accordance with 32 CFR Section 33.22 and the applicable OMB Circulars, any costs to the SFRA resulting from obligations incurred by the SFRA during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently authorizes such costs. Any other SFRA costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:

(1) the costs result from obligations which were properly incurred by the SFRA before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and

(2) the costs would be allowable if the Agreement were not otherwise suspended or expired at the end of the funding period in which the termination takes effect.

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
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b. The enforcement remedies specified in this section do not relieve the SFRA or its subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25, including the restrictions on entering into a covered transaction with any party which is debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

**Article XI
LEGAL AUTHORITY**

Section 1101. Legal Authority

The parties hereby represent and warrant that they are under no existing or reasonably foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and conditions of this Agreement. The parties will promptly notify each other of any legal impediment that arises during the term of this Agreement that may prevent or hinder the party's abilities to perform its duties under this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement, by their authorized representatives, hereby cause this Agreement to be executed.

SAN FRANCISCO REDEVELOPMENT AGENCY

By: _____
NAME:
TITLE: Director

Dated: _____

THE UNITED STATES OF AMERICA

By: _____
Mr. Robert Griffin
Assistant Commander for Acquisition, Naval Facilities
Engineering Command

Dated: _____

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

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SFRA 10/7/2010 COMMENTS TO
NAVY 25 JUNE 2010 VERSION

EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
AND
THE SAN FRANCISCO REDEVELOPMENT AGENCY
SAN FRANCISCO, CALIFORNIA

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**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
AND
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA
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**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

**EARLY TRANSFER COOPERATIVE AGREEMENT
COVERING PORTIONS OF
HUNTERS POINT NAVAL SHIPYARD
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE NAVY
A N D
THE SAN FRANCISCO REDEVELOPMENT AGENCY,
SAN FRANCISCO, CALIFORNIA**

THIS EARLY TRANSFER COOPERATIVE AGREEMENT ("Agreement") is made by and between the **UNITED STATES OF AMERICA**, acting by and through Naval Facilities Engineering Command ("Navy") and the **SAN FRANCISCO REDEVELOPMENT AGENCY**, San Francisco, California ("SFRA") recognized as the local redevelopment authority by the Office of Economic Adjustment ("OEA") on behalf of the Secretary of Defense and also a local public authority legally empowered to enter into this Agreement. Hereinafter, the Navy and the SFRA are each sometimes referred to individually as a "Party" and collectively as the "Parties."

GENERAL PROVISIONS

The Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and, in accordance with various base closure statutory authorities, the Department of Defense ("DOD") closed and plans to dispose of real and personal property at those facilities. The Navy is authorized to dispose of real and personal property on Hunters Point Naval Shipyard ("HPNS"), to the City of San Francisco or to a local reuse organization approved by the City, in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-160). The SFRA is a local reuse organization approved by the City of San Francisco to accept conveyance of HPNS property in accordance with the authorities set out above.

The Parties did execute and enter into that certain *Conveyance Agreement Between the United States of America, Acting by and through the Secretary of the Navy, and the San Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated March 31, 2004 ("Conveyance Agreement").

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

completion of all remedial action necessary to protect human health and the environment provided that the property is suitable for transfer for the intended uses and the intended use is consistent with the protection of human health and the environment. Under this early transfer authority, the Navy intends to convey title to the portion of HPNS property known as the Area Covered by Environmental Services (hereinafter "ACES"), to the SFRA. The ACES is defined in Section 222 below and shown in Appendix 2. The SFRA assumes responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section 211 below) for the consideration set forth in this Agreement. In accordance with 42 U.S.C. 9620(h)(3)(C)(iii), after all response action necessary to protect human health and the environment with respect to any hazardous substances remaining on the ACES on the date of transfer has been taken, the Navy will deliver to the SFRA an appropriate document containing the CERCLA warranty that all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken.

Article I SCOPE AND PURPOSE

Section 101. Scope and Purpose of Agreement

The principal purpose of this Agreement is to facilitate early transfer and redevelopment by providing the vehicle under which the SFRA will perform the Environmental Services in the ACES in order to satisfy the covenant requirements of the "early transfer" provisions of Section 120(h)(3)(C)(iii) of CERCLA for the consideration specified herein. This Agreement is considered a Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section 2701(d)(1) and benefits both the Navy and the SFRA because it facilitates SFRA access to and control of the ACES in conjunction with implementation of the SFRA's Reuse Plan (as defined in Section 220 below) and immediate reuse by allowing the SFRA to cause to be performed certain environmental remediation activities while simultaneously facilitating redevelopment as defined herein. In addition, early transfer will allow the Navy to convey title in compliance with CERCLA requirements at an earlier date than could otherwise be achieved.

The Navy is conveying HPNS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G to the SFRA pursuant to the Navy's early transfer authority. The Navy and the United States Environmental Protection Agency ("EPA") have issued Records of Decision ("RODs", see Section 207) for HPS Parcels B and G selecting remedial actions for responding to releases of CERCLA hazardous substances as provided by the Federal Facility Agreement ("FFA") entered into by the Navy and the Environmental Regulatory Agencies (as defined in Section 229 below) in 1991. The Navy is legally responsible for executing the remedial actions selected in those RODs as required by CERCLA, the National Oil and Hazardous Substances Contingency Plan ("NCP"), and the FFA.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

It is anticipated that the completion of remedial action required by the RODs will satisfy the covenant requirements of Section 120(h)(3)(C)(iii) of CERCLA.

Subject to the provisions of this Agreement, the Navy and SFRA hereby agree that SFRA shall assume the Navy's responsibility for and shall cause to be performed the Environmental Services (defined below in Section -xx-) that are required to complete remedial action required by the RODs and applicable Remedial Design reports within the ACES for Parcels B and G and that are necessary to comply with CERCLA and the NCP, achieve Regulatory Closure, and comply with Long Term Obligations within the ACES in accordance with the Technical Specifications and Requirement Statement ("TSRS") (Exhibit 9) subject to the receipt of funding from the Navy in an amount not to exceed the maximum funding obligation of _____.

The Navy and the Environmental Regulatory Agencies have entered into an FFA Amendment suspending the Navy's FFA obligations to implement remedial actions required by the RODs and applicable Remedial Design reports. The SFRA has agreed with the Environmental Regulatory Agencies to conduct these remedial actions pursuant to an Administrative Order on Consent ("AOC", see Section xx) entered into with the Environmental Regulatory Agencies. The FFA Amendment provides that the Navy will resume CERCLA responsibility for compliance with the FFA in the event of a Finding of Default as provided in the AOC or upon a termination of this Agreement pursuant to Sections 701 and 1003 below.

~~The scope of this Agreement does not include additional remedial action to address Uninsured Unknown Conditions (as defined in the TSRS) that may be required by Amendments or Explanations of Significant Differences ("ESDs") to the RODs except to the extent attributable to any negligence and misconduct of the SFRA. In the event that such additional remediation is required, the Parties agree to meet and confer to discuss a mutually agreeable solution.~~

~~The scope of this Agreement does not include Navy Retained Conditions ("NRC", see Section xx) or Ineligible Work (see Section xx). Nothing in this Agreement shall be construed as creating a legal obligation under this Agreement (contractual or otherwise) for either the Navy or SFRA to fund or perform remediation addressing either Navy Retained Conditions or ("NRCs, see Section xx), Special Exclusions (Section xx), or Ineligible Work (Section xx), nor shall this Agreement be construed to limit or otherwise effect any legal obligations of either the Navy or SFRA apart from this Agreement, except as specifically provided herein. No funds provided under Section 302(a) may be used by the SFRA to fund or perform either a NRCs, Special Exclusions or Ineligible Work. If the SFRA remediates an NRC or Special Exclusion or performs Ineligible Work either voluntarily or pursuant to the AOC or other enforcement order, the SFRA agrees that it they will do so at its their own cost and expense, subject to the provisions of Article III and Section 711.~~

Notwithstanding any other provisions of this Agreement, the Navy is not a party to,

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

bound by, or responsible for compliance with any of the provisions of the AOC including AOC provisions concerning NRCs or Special Exclusions. Nothing in this Agreement shall be construed as creating a Navy legal obligation to SFRA under this Agreement (contractual or otherwise) for the Navy to comply with either AOC or Amended FFA provisions regarding NRCs or Special Exclusions.

A r t i c l e I I DEFINITIONS

Section 201. Agreement

The term "Agreement" means this Early Transfer Cooperative Agreement.

Section 202. Navy's Representative

The term "Navy's Representative" for execution purposes is the Naval Facilities Engineering Command, which is responsible to the office of the Secretary of the Navy for environmental remediation within the ACES, or its successor.

Section 203. San Francisco Redevelopment Agency

The term San Francisco Redevelopment Agency or "SFRA" is the Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the HPNS by the OEA on behalf of the Secretary of Defense. The SFRA is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis."

Section 204. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" or "HPNS" means that portion of the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 205. Administrative Order on Consent

The term "Administrative Order on Consent" or "AOC" means that certain signed agreement executed between the SFRA, HPS Development Co., LP, and the Environmental Regulatory Agencies dated XX- XX-XXXX.

Section 206. Navy-Retained Conditions

The term "Navy Retained Conditions" means Unexploded Ordnance (as defined

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in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 214). The term Navy Retained Conditions does not include Ineligible Work as defined in Section 218 of the ETCA.

The following defines "Navy Retained Conditions" or "NRCs" which are not considered to be within the scope of the Environmental Services covered by this Agreement. The SFRA is not responsible for conducting, investigating or remediating the following NRCs under this Agreement: (i) Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; and Radiological Materials; (ii) the performance of CERCLA five year reviews for years 2013 and 2018 for remedies selected in CERCLA RODs issued by the Navy; and (iii) activity identified as the responsibility of the Navy in the Amended FFA. The term "NRC" does not include Ineligible Work as defined in Section 218 below.

Section 207. CERCLA Records of Decision

The term "CERCLA Records of Decision" or "CERCLA RODs" means the CERCLA Record of Decision for Parcel B dated January 14, 2009, and the CERCLA Record of Decision for Parcel G dated February 18, 2009.

Section 208. Regulatory Closure

The term "Regulatory Closure" means Environmental Regulatory Agency approval, by issuance of one or more Certificates of Completion, or Remedial Action Completion Reports ("RACR") encompassing the entire ACES (or encompassing the portion of the ACES or particular condition with respect to which the term is used) pursuant to the procedures set forth in the AOC and, to the extent the Environmental Services includes activities not covered by the AOC, such as an Unknown Condition Discovered Outside the Course of Remediation involving a petroleum release, written Environmental Regulatory Agency approval that no further action is required for that condition.

The Term "Regulatory Closure" means Environmental Regulatory Agency approval of one or more Remedial Action Completion Reports (RACRs) throughout the ACES pursuant to procedures set forth in the AOC.

Section 209. Navy and Government

The terms "Navy" and "Government" are used interchangeably herein.

Section 210. Long-Term Obligations

The term "Long-Term Obligations" means any long-term review, monitoring, reporting and institutional control ("IC") and operation and maintenance requirements that are required to be performed after a RACR has been approved pursuant to the AOC including but not limited to requirements associated with or in furtherance of the CERCLA RODs, Remedial Design reports,

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and Operation and Maintenance reports reviewed and approved pursuant to the FFA, and including providing existing records and reports for the Navy's preparation of the CERCLA five year reviews for years 2013 and 2018 and SFRA preparation of the CERCLA five-year reviews thereafter. Long-Term Obligations do not include obligations attributable to NRCs or Special Exclusions.

Section 211. Environmental Services

The term "Environmental Services" means performance of the activities necessary to achieve Regulatory Closure and comply with Long-Term Obligations with respect to (i) Known Conditions and Unknown Conditions Discovered During the Course of Remediation even if the funds provided under this Agreement, and any insurance proceeds from the Environmental Insurance Policies, have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (ii) Unknown Conditions Discovered Outside the Course of Remediation, but only to the extent such activities are funded by the Environmental Insurance Policies or to the extent such funding is unavailable as a result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

The term "Environmental Services" does not include, except as specifically provided herein, the performance of any activities related to the following: Navy Retained Conditions; Ineligible Work; or Special Exclusions.

The term "Environmental Services" means environmental remediation activities required by this Agreement to address Known Conditions and Insured Unknown Conditions (as defined in the TSRS) and that are necessary to comply with ROD and applicable Remedial Design report requirements, obtain Regulatory Closure throughout the ACES, and comply with Long Term Obligations as provided in the TSRS.

Section 215. Radiological Materials *[Need to discuss further]*

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term "Radiological Materials" does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components that do not require special handling or special treatment as a result of the materials containing radionuclides, or are otherwise subject to regulatory standards that would be applied in the absence of such radiological materials.

Section 216. Environmental Insurance Policies

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The term "Environmental Insurance Policies" means the eEnvironmental Insurance insurance ("EI") policies which the SFRA or its Contractor procures shall bind subsequent to the execution of this Agreement by an insurance carrier that is rated () in accordance with the requirements as set forth below in Section 712.e. Prior to conveyance, the Navy and the SFRA shall have reviewed and approved the terms, conditions and insurer as set forth in and identified by the Environmental Insurance Policies.

Section 218. Ineligible Work

The term "Ineligible Work" means the performance of any or more of the following work:

a. Cleanup of: (1) lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location and not previously demolished by the Navy or its contractors or (2) lead in soil resulting from natural weathering LBP from buildings and structures.

b. Cleanup of pesticides and herbicides applied in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors including, but not limited to, chlordane properly applied as a termiticide to presently existing wooden structures, their foundations, and underlying soils.

e. Management and off site disposal of contaminated soil or solid waste excavated or generated during the course of Redevelopment Activity within any portion of the ACES for which all appropriate Environmental Regulatory Agencies have previously approved Regulatory Closure following: (1) the installation of a cap/cover remedial action by the SFRA, or (2) issuance of an approved RACR following installation of a cap/cover remedial action by the Navy.

d.c. Additional remediation necessary to implement a change in land use from the land uses set forth in the 1997 Reuse Plan.

e.d. Management and disposal of construction and demolition debris except to the extent such debris is generated in the course of an activity required by the TSRS conducting the Environmental Services, such as the demolition of hardscape necessary to install a monitoring well.

e. Clean up of contaminants within existing buildings and structures, that have not been released into the environment; except for removal of liquids, solids, gases, sediments, and/or sludges from and including oil/water separators and other equipment and containment

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

vessels within or beneath structures to the extent the equipment and vessels ~~could were~~ not ~~have been~~ reasonably discovered by visual inspection during a pre-conveyance walk-through in which both parties participated.

~~f. — f.~~

Any activity, ~~including management and offsite disposal of excavated contaminated soil or solid waste,~~ associated with disturbing or altering a cover, cap or other component of an environmental remedy installed pursuant to the AOC, except to the extent such disturbance or alternation is necessary to comply with the AOC ~~as a result of remedy failure to address an environmental condition other than a condition that addressed by the disturbed or altered remedy component was designed to address.~~

~~g. —~~

~~h. g.~~ Non-cleanup environmental compliance activities relating to redevelopment/construction following conveyance (e.g., compliance with air quality permit requirements for control of fugitive dust emissions that are not contaminated with hazardous substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES") stormwater discharge permit requirements regulating excavation/disturbance of soil that is not contaminated with hazardous substances or petroleum).

~~i. h.~~ Any other work or activity that is not related to: ~~(1) achieving "Regulatory Closure" for releases of hazardous substances or petroleum within the ACES, or (2) performing associated "Long-term Obligations."~~ the performance of the Environmental Services.

~~j. i.~~ All Regulatory Enforcement Activities.

~~k. j.~~ Cleanup that is required as a result of a violation of: (i) use restrictions by the SFRA, its successors and assigns, or (ii) any land use restriction, groundwater restriction, deed covenant or IC applicable to the ACES.

~~l. — k.~~ Cleanup arising from the failure of the SFRA, its successors and assigns, to operate or maintain a remedy as required by the PCAP or USEPA through the CERCLA RODs, AOC, Land Use Control Remedial Design Reports ("LUC RD"), Risk Management Plan ("RMP") and/or Operation and Maintenance Plan ("OMP").

Section 220. Reuse Plan

The term "Reuse Plan" means that certain Redevelopment Plan for the HPNS, approved by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997, as such Redevelopment Plan has been amended as of the date of the execution of this Agreement by the following documents: (i) XXXX and (ii) XXXX, all in accordance with the California

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).

Section 221. ~~__-(Reserved)??~~

~~Reserved??~~

Section 222. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2~~--~~, and specifically excludes IR Sites 7/18 and the radiologically-impacted area.

Section 223. ~~__~~-Unexploded Ordnance/Munitions or Explosives of Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

Section 224. Military Munitions

The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes but is not limited to confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and non-standard explosive devices made from either military or non-military materials by personnel unrelated to DOD. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

Section 225. Technical Specifications and Requirement Statement

The term "Technical Specifications and Requirement Statement" or "TSRS" means the statement of work included in Appendix 9.

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Section 226. Regulatory Oversight

The term "Regulatory Oversight" includes ~~the following services provided all activities performed~~ by EPA, DTSC, and RWQCB ~~reasonably necessary to oversee the implementation of the AOC, other than Regulatory Enforcement Activities, which are considered allowable costs under this Agreement.~~

~~a. Technical review of documents or data;~~

~~b. Identification and explanation of state applicable or relevant and appropriate requirements (ARARs);~~

~~c. Site visits other than enforcement inspections;~~

~~d. Administration of this Agreement, technical review and comment on all documents and data regarding DoD prioritization of sites;~~

~~e. Determination of scope and applicability of agreements [elaborate], excluding any litigation costs against the U.S. Government;~~

~~f. Independent quality assurance/quality control samples not to exceed ten percent of the samples collected.~~

Section 227. Regulatory Enforcement Activities

~~The term "Regulatory Enforcement Activities" means any In accordance with 10 U.S.C. 2701(d)(3), regulatory enforcement costs that are not allowable costs under 10 U.S.C. 2701(d)(3), are not allowable costs under this Agreement. The term "Regulatory Enforcement Activities" including es:~~

~~a. Activities associated with the City of San Francisco taking, or preparing to take, enforcement actions against third parties for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety or alleged violations of land use restrictions set forth in quitclaim deed(s) or in a Covenant to Restrict the Use of Property ("CRUP"), as hereinafter defined, on the ACES; or~~

~~b. Activities activities associated with EPA, DTSC, RWQCB, or other independent State or Federal regulatory agency with jurisdiction over the ACES taking, or preparing to take, enforcement actions against the SFRA, or its contractors or agents, for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety.~~

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Section 228. Navy's Grants Officer

The term "Navy's Grants Officer" means the Director of Acquisition, NAVFACENGCOM, ~~and is the only authorized Government official who can make any modifications and obligate funds under this Agreement.~~

Section 229. Environmental Regulatory Agency or Agencies

The term "Environmental Regulatory Agency or Agencies" means the United States Environmental Protection Agency ("USEPA"), the California Department of Toxic Substances Control ("DTSC"), and the San Francisco Bay Water Quality Control Board ("RWQCB").

Section 230. Covenant to Restrict the Use of Property

The term "Covenant to Restrict the Use of Property" or "CRUP" means that certain document required by the CERCLA RODs that identifies the environmental covenants and restrictions that shall apply to the ACES.

Section 231. Amended Federal Facilities Agreement

The term "Amended Federal Facilities Agreement" or "Amended FFA" means that certain document executed by the Navy, USEPA, DTSC, and RWQCB dated _____, whereby the parties to the original Federal Facilities Agreement for the HPNS dated January 22, 1992 ("FFA"), amended such FFA.

Section 232. ~~Petroleum Corrective Action Plans [Delete this section if all PCAP work is completed prior to transfer]~~

~~The term "Petroleum Corrective Action Plans" or "PCAPs" means the Petroleum Corrective Action Plan entered into among SFRA, the Water Board and DTSC effective concurrent with the Effective Date and addressing petroleum releases associated with the ACES that are not otherwise addressed within the CERCLA RODs. [Reserved – PCAP definition, and references in operative language to be reinserted if PCAP work is not completed by Navy before execution.]~~

Section 233. ~~Remedial Action Closeout Report~~

~~The term "Remedial Action Closeout Report" or "RACR" means (Insert exact definition from AOC).~~

Section 234. ~~Certificate of Completion~~

~~The term "Certificate of Completion" means (Insert exact definition from AOC).~~

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Section 235. –Environmental Conditions

The term “Environmental Condition(s)” means a discharge, release, or threatened discharge or release into the environment of a hazardous substance, waste, oil, or petroleum product within the scope of any of the following:

- a. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601 et seq.;
- b. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.;
- c. California Hazardous Waste Control Act (California Health and Safety Code Sections §25100 et seq.);
- d. California Hazardous Substances Account Act (California Health and Safety Code Sections §25300 et seq.);
- e. Porter-Cologne Water Quality Control Act (California Water Code §13000 et seq.);
- f. Or similar federal or state environmental law.

Section 236 –Known Condition(s)

The term “Known Condition” means an Environmental Condition identified in the CERCLA RODs as requiring remedial action of one or more specified chemicals of concern in a specified medium (e.g., soil or groundwater) at one or more specified Installation Restoration (IR) site or other specified location.

Section 237 –Navy Remedy Failure

The term “Navy Remedy Failure” means any circumstance, not due to negligence by SFRA, where a remedy selected in the CERCLA RODs or subsequent CERCLA decision document issued by the Navy has been implemented by SFRA in accordance with the RODs and approved remedial design documents, but is determined by EPA not to have achieved the ROD’s remedial action objectives. “Navy Remedy Failure” does not include volatile organic compound (VOC) vapor migration and accumulation caused by redevelopment activities.

Section 238. – Navy Retained Conditions

The term “Navy Retained Conditions” means Unexploded Ordnance (as defined in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 214). The term Navy Retained Conditions does not include Ineligible Work as defined in Section 218 of the ETCA.

Section 239. –Special Exclusions.

The term “Special Exclusions” means any of the following:

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a. Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the Parcels B and G CERCLA RODs, except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:

1. The negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations;

2. Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Navy Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in paragraphs 2 through 7 of this Section;

b. Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.

c. Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.

d. Any activity and associated cost identified in the Amended Federal Facility Agreement (FFA) as a "Navy Obligation" or otherwise identified as the responsibility of the Navy, (Navy Note: Subject to further review and reconsideration as FFA amendment requirements are negotiated).

e. The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the CERCLA RODs issued by the Navy.

f. Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

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g. (Place holder for any additional exclusions in the insurance policies mutually agreed by Navy and SFRA).

Section 240. --Unknown Conditions Discovered During the Course of Remediation

The term "Unknown Conditions Discovered During the Course of Remediation" means Environmental Conditions that are discovered in the course of implementing the requirements of the CERCLA RODs in a portion of the ACES that has not achieved Regulatory Closure, and are not Known Conditions, Special Exclusions, or Navy Retained Conditions.--

Section 241. --Unknown Conditions Discovered Outside the Course of Remediation

The term "Unknown Conditions Discovered Outside the Course of Remediation" means Environmental Conditions other than Known Conditions and Unknown Conditions Discovered During the Course of Remediation--

Article III OBLIGATIONS OF THE PARTIES

Section 301. Obligations of the SFRA

In consideration of the Navy's agreement to pay the SFRA for allowable costs in the amount specified in Section 302 below, the terms of this Agreement, the provisions of Title 32 of the Code of Federal Regulations ("CFRs"), and the applicable Office of Management and Budget ("OMB") Circulars, the SFRA ~~assumes responsibility for performing the Environmental Services. Subject to the provisions of Sections 302 hereof, the SFRA agrees that it shall perform and complete or cause to be performed and completed the necessary Environmental Services.~~

~~to address Known Conditions and Insured Unknown Conditions as defined and provided in the TSRS. The Insured Scope of Work and Insured Conditions as defined herein n.~~

a. The SFRA shall complete the Environmental Services consistent with for Known Conditions and Insured Unknown Conditions (as defined in the TSRS) that are necessary to: (1) comply with the RODs and applicable Remedial Design reports, (2) comply with AOC requirements, (3) achieve Regulatory Closure, and (4) comply with Long Term Obligations as provided in the TSRS. The SFRA shall conduct and bear the cost of such services addressing Known Conditions even if such costs exceed the amount of ETCA funds provided and any insurance proceeds. If the SFRA transfers a portion of the ACES to another party, SFRA shall

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1 remain responsible for performing the Environmental Services on that portion. The SFRA shall
2 ensure that the initial cap/covers required by the CERCLA RODs shall be installed throughout
3 the ACES before transferring its final property interest within the ACES to a third party or no
4 later than seven (7) years after the date of execution of this Agreement by both parties,
5 whichever shall occur first.

6
7 b. The SFRA's obligation to perform Environmental Services is expressly
8 conditioned upon the Navy providing funding for performing the Environmental Services in
9 accordance with Section 302 hereof. However, to the extent that the Navy pays a portion of
10 the funding set forth in Section 302 hereof, but fails to pay the full amount set forth in that
11 Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the
12 SFRA's obligations shall be limited to only that portion of Environmental Services which have
13 been performed by use of the funds actually provided by the Navy or the insurer as set forth in
14 Section 712.b hereof. Any dispute with respect to delineating the portion of the
15 Environmental Services performed with the use of such partial funding shall be subject to
16 dispute resolution pursuant to Section 1001 hereof. The SFRA shall make reasonable
17 progress toward performing Environmental Services.

18
19 c. In the event this Agreement terminates pursuant to Section 1003 below, the
20 SFRA shall return all unused grant funds to the Navy or cause to be returned to the Navy any
21 funds held by the SFRA or Escrow Agent not otherwise committed for allowable costs of
22 payment for Environmental Services performed in accordance with this Agreement. [copied
23 from 1003(e)(6).

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24
25 d. The SFRA shall cause the performance of the Environmental Services in a
26 manner that will not unreasonably delay any action that the Navy determines that it may
27 undertake in order to address NRCs or Special Exclusions.

28
29 e. The SFRA shall indemnify the Navy pursuant to the terms of Section 711.0
30 hereof.

31
32 f. The SFRA shall conduct audits and shall provide performance and financial
33 reports to the Navy as follows:

34
35 (1) In accordance with the provisions contained in 32 CFR 33.26, the SFRA is
36 responsible for obtaining annual audits in accordance with the Single Audit Act Amendments of
37 1996 (31 USC 7501-7507) and revised OMB Circular A133, "Audits of States, Local
38 Governments, and Non-Profit Organizations." The audits shall be made by an independent
39 auditor in accordance with generally accepted government auditing standards covering financial
40 audits. The costs of audits made in accordance with this section are allowable costs under this
41 Agreement.

42
43 (2) The SFRA is responsible for assuring compliance with applicable

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Federal requirements and that performance goals are being achieved. In accordance with 32 CFR 33.40, the SFRA shall submit timely performance reports to the Navy. All reports shall be submitted to the Navy on the same schedule as the SFRA, its developer, or its contractors submit such information to the insurance provider.

(3) In accordance with 32 CFR 33.41, the SFRA shall submit timely financial status reports to the Navy. All reports shall be submitted to the Navy on the same schedule as the SFRA, its developer, or its contractors submit such information to the insurance provider.

g. In the event that the SFRA is served with a complaint or written notice by an Environmental Regulatory Agency, or other third parties, that suggests that an action is necessary related to an Environmental Condition at or affecting the ACES under Section 101 or 302 of this Agreement and for which the SFRA is not responsible, the SFRA shall provide the Navy Notice and a copy of all applicable documents as soon as possible but no later than seven (7) calendar days following such receipt.

h. The SFRA shall notify the Navy within thirty (30) calendar days of SFRA discovering, or receiving actual notice of, any Environmental Condition at or affecting the ACES or that the SFRA discovers, that suggests that an action is necessary under Section 101 or 302 of this Agreement and for which the SFRA is not responsible. The exception to this duty is that the SFRA shall notify the Navy of the discovery of any UXO, biological warfare agents, or radiological or chemical warfare agents within twenty-four (24) hours of any such discovery. If the Navy responds to this notice by asserting that the Environmental Condition that is the subject of the notice provided under this paragraph 301(h) or paragraph 301(g) above is within the Scope of the Environmental Services, the Parties shall, within a reasonable time after such notification response, meet and confer to attempt to reach a mutually agreeable solution to address the circumstances, including, if appropriate agreeing to regarding the scope of, and allocation of costs for, any initial investigation that may be necessary to ascertain whether the discovery is properly categorized as a NRC or as part of within the scope of Environmental Services, to be performed by the SFRA. To the extent the AOC provides for a process for involving the Environmental Regulatory Agencies in resolving a dispute regarding whether an Environmental Condition is with the scope of the Environmental Services, the parties shall in good faith engage in that process. If a mutually agreeable solution to address the circumstances is not reached within a reasonable period of time after commencement of discussions between the SFRA and the Navy and, if applicable the Environmental Regulatory Agencies, the Parties reserve the right to initiate the dispute resolution process as described in Section 1001 of this Agreement.

i. Notwithstanding the preceding Section 301.h, the SFRA shall have the right, but not the duty, to take or cause to be taken the following actions within the ACES with respect to NRCs any Environmental Condition that is not within the scope of the Environmental Services:

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(1) **Investigation Activities.** Other than a condition subject to emergency ~~a~~Action, if the SFRA discovers a condition it reasonably believes is a NRC~~an Environmental Condition that is not within the scope of the Environmental Services~~, the SFRA shall use its reasonable efforts to avoid incurring costs or obligations with respect to the Environmental Cecondition~~by seeking to further ascertain the existence, nature, character and extent of conditions that may constitute a NRC. Nothing in this Agreement shall be construed to authorize the SFRA to seek reimbursement from the Navy or as a Navy promise or obligation to provide such reimbursement to the SFRA for costs solely associated with the initial investigation needed to ascertain the existence, nature, character and extent of the condition.~~ If ~~the initial investigation demonstrates that the condition at issue is a NRC and if~~, despite using commercially reasonable efforts to avoid incurring such costs, the SFRA incurs costs or obligations with respect to a NRC, the Environmental Condition, the SFRA may seek reimbursement from the Navy for the reasonable investigation costs, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001.

(2) **Emergency Actions.** The SFRA may take immediate action to address an imminent threat to human health or the environment. The SFRA may seek reimbursement from the Navy, subject to the Navy's funding limitation as set forth in Section 401 and the dispute resolution provisions of Section 1001, for the reasonable response costs related to such emergency action regarding a Navy Retained Condition where notification cannot practicably be provided to the Navy before such action needed to be taken OR notification is provided to the Navy before such action and the Navy agrees to permit the SFRA to take such emergency action under terms agreed to by the Parties.

(3) **Notice.** To the extent that the SFRA takes or causes to be taken actions in accordance with Section 301.i(1) and (2), the SFRA shall notify the Navy of such action as soon as practicable but no later than fifteen (15) business days after the SFRA takes or causes to be taken any such action. If the Navy disputes an SFRA action taken under Section 301.i(1) and (2), the Navy may initiate dispute resolution procedures under Section 1001.

j. The SFRA shall provide to the Navy all information obtained or developed by the SFRA with respect to any NRCs~~Environmental Condition that is not within the Scope of the Environmental Services and~~ that the SFRA discovers.

k. The SFRA shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein.

l. The SFRA shall conduct annual site inspections pursuant to the LUC RD and CERCLA RODs, AOC, CRUP, and deeds and shall assure preparation of any applicable compliance monitoring reports and certificates associated with environmental land use restrictions on the ACES.. [NOTE: Subject to SFRA preparing a proposal for the scope and cost

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[of IC monitoring and enforcement](#)

Section 302. Obligations of the Navy

a. The maximum funding obligation of the Navy to the SFRA for performing the Environmental Services during the term of this Agreement is \$_____, which shall be paid in one advance payment which shall be made within -- (--) days after recordation of the deed conveying title to the Early Transfer Property from the Navy to the SFRA. The Navy's obligation to pay hereunder is subject to the availability of appropriated funds and this shall not be interpreted to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

b. Notwithstanding the provisions of Section 302.a. above, prior to payment being made to the SFRA, the terms, conditions and insurer, as required by Section 712 below, and as set forth in a final indication of the Environmental Insurance Policies, must be reviewed and approved by the Navy and the SFRA, which approval shall not be unreasonably withheld.

~~(c.)~~—Within a reasonable time after the SFRA has provided the Navy with proper documentation establishing that Regulatory Closure has been obtained for the ACES, or portions of the ACES, as set forth in the AOC, and a written request from the SFRA to issue the appropriate CERCLA warranty for the ACES, or such portions of the ACES, the Navy shall issue to the SFRA the warranty required under CERCLA, Section 120(h)(3)(C)(iii). The SFRA shall bear the costs of preparing any new legal descriptions for the CERCLA warranty to be recorded.

d. The Navy shall comply with the procedures and terms set forth in Section 301 with respect to discovery of ~~potential Pollution Conditions that may be NRCs.~~[Environmental Conditions that are not within the scope of the Environmental Services.](#)

e. Any Navy liability for the death of or injury to any person, or the loss of or damage to any property, caused by Navy use of the ACES shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended), or as otherwise provided by law.

[f. The Navy shall cause the performance of any action that the Navy determines that it may undertake in order to address NRCs or Special Exclusions in a manner that will not unreasonably delay or interfere with the SFRA's performance of the Environmental Services.](#)

Article IV FUNDING LIMITATION AND BUDGETING

Section 401. Navy's Funding Limitation

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The Maximum Navy Funding Obligation for the Environmental Services to be performed by the SFRA under this Agreement is \$ _____. Except as may otherwise be provided in Section 302 above, the Navy will not pay any Environmental Service costs that exceed the amount described in Section 302.a. above. The Navy's obligation to pay any costs hereunder is subject to the availability of appropriated funds. Nothing in this Agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The SFRA incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the SFRA's ability to seek reimbursement for any additional costs, or to negotiate any additional amounts to be paid, do not create a Navy obligation to pay such costs or amounts in excess of the Maximum Navy Funding Obligation.

Notwithstanding any other terms herein, this Agreement is not intended to mean and shall not be interpreted to obligate the Navy to pay any amount to the SFRA in excess of the Maximum Navy Funding Obligation or to perform any remedial, response or other environmental action. The obligation, if any, to perform such remedial, response, or other environmental action shall be governed solely by applicable law. However, nothing herein precludes the Parties from entering into agreements to address other Navy obligations or activities.

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Article V **PAYMENT SCHEDULE**

Section 501. General

Subject to the Availability of funds, the SFRA shall be paid in accordance with Section 302 hereof.

Section 502. Payments

a. The amount provided by the Navy is an advance payment to be made to the SFRA. Such payment shall, upon execution by all Parties to this Agreement, be deposited into an interest bearing escrow account pending transfer of the advance payment to the SFRA in accordance with the Escrow Instructions set forth in Appendix --. Payment to the SFRA shall be made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:

- (1) The SFRA shall maintain or demonstrate the willingness and ability to

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

maintain procedures to minimize the time elapsing between the transfer of the funds from the escrow account to the SFRA and their disbursement by the SFRA to an independent third party payee.

(2) Within a reasonable period of time after receiving the advance payment from the escrow account, the SFRA shall deposit the funds with an independent third party payee . Such independent third party payee shall be responsible for making all payments to a subsequent transferee and/or environmental contractor(s), with whom the SFRA enters into an agreement to perform the Environmental Services or to supervise the performance of the Environmental Services. Funds shall be considered disbursed by the SFRA when the following has occurred:

(A). The SFRA does not retain possession of the funds;

(B). The SFRA cannot get the funds back upon demand (this does not include allowable costs incurred by the SFRA for which the SFRA requests proper reimbursement from the independent third party payee);

(C). The independent third party payee is an independent stakeholder from the SFRA and the party or parties with whom the SFRA enters into an agreement to perform the Environmental Services or supervise the performance of the Environmental Services and not the agent of the SFRA;

(D). The SFRA receives something in exchange for the transfer of funds to the independent third party payee, such as a contractual promise to hold the funds and make payments in accordance with specified procedures.

(3) Any agreement by the SFRA with an independent third party payee must also include the above provisions and satisfy the requirements of 32 CFR §33.21(c).

(4) Interest. Any interest earned on the advance payment while in the escrow account pending transfer to the SFRA and any interest earned on the advance payment by the SFRA prior to the disbursement of those funds by the SFRA to the independent third party payee must be returned to the Navy in accordance with 32 CFR §33.21(h)(2)(i). However, any interest earned on those funds after disbursement from the SFRA to the independent third party payee in accordance with Section 502.a. (2)(A)-(D) are considered funds to be utilized for the purposes of this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Article VI PAYMENT

Section 601. RESERVED

Section 602. Relation to Prompt Payment Act.

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, et seq.). Accordingly, the Navy is not liable to the SFRA for interest on any untimely payments under this Agreement.

Section 603. Direct Navy Payment of SFRA Obligations

The Navy is not in privity with, and shall not directly pay any SFRA contractors, employees, vendors, or creditors for any costs incurred by the SFRA under this Agreement. The Navy assumes no liability for any of the SFRA's contractual obligations that may result from any SFRA performance of duties under this Agreement. The Navy assumes no liability hereunder for any SFRA contractual obligations to any third parties for any reason. The SFRA hereby agrees to defend and hold the Navy harmless from any such liabilities.

Article VII GENERAL PROVISIONS

Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. The requirements and provisions described in Subsections 701.a and 701.b below shall survive such termination, but only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Section 401 above:

a. SFRA requirements to ~~maintain compliance with Regulatory Closure and any perform~~ applicable Long-Term Obligations, ~~including but not limited to those required under the CERCLA RODs, PCAPs, and AOC;~~

~~a.b.~~ The SFRA's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and Section 715.

Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

With Regard to the Navy:

Director, Base Realignment and Closure Management Office
Department of the Navy
1455 Frazee Road, Suite 900
San Diego, CA 92108

With a copy to:

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With Regard to the SFRA:

San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103
Attn: _____

With a copy to:

Celena Chen, Senior Attorney
San Francisco Redevelopment Agency
One South Van Ness Avenue
Fifth Floor
San Francisco, CA 94103

With a copy to:

Elaine Warren, Assistant City Attorney
Office of City Attorney
City of San Francisco City Hall
Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

With a copy to:

George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Section 708. Conflict of Interest

The SFRA shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

Section 709. Access to and Retention of Records

The SFRA shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other Federal Government agency access and the right to examine all SFRA records, books, papers, and documents related to the SFRA's performance under this

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Agreement and any additional records, book papers and documents that are otherwise required to be retained under the AOC. This includes all such records in automated forms ("Records") that are within the SFRA's custody or control, and that relate to its performance under this Agreement. This right of access excludes any attorney-client communications, attorney work product, or any other legally privileged documents. The SFRA shall retain required records intact in their original form, if not the original documents, or in another form if the Navy approves. Such approval shall not be unreasonably withheld. SFRA record retention requirements shall extend for at least three (3) years following the completion or the termination of this Agreement. The SFRA shall allow the Navy access to the SFRA's records during normal business hours. The Navy will give the SFRA seventy-two (72) hours prior notice of its intention to examine the SFRA's records, unless the Navy reasonably determines that more immediate entry is required by special circumstances. Any such entry shall not give rise to any claim or cause of action against the Navy by the SFRA or any officer, agent, employee, or contractor thereof.

Section 710. Change of Circumstances

Each Party will promptly notify the other Party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such Party's ability to perform this Agreement.

Section 711. Liability and Indemnity, Waiver and Release

a. The SFRA's Obligations and Limited Waiver of Statutory Rights

(1) In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement, the SFRA agrees that it shall, upon receipt of the payment of the grant award, indemnify and hold the Navy harmless for any of the following, provided, however the SFRA's indemnification obligations under this subparagraph (a)(1) shall in no event apply to NRCs ~~which are Uninsured Conditions or Special Exclusions~~ except to the extent that the NRCs or Special Exclusions are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest:

(A) any claims incurred in responding to Eenvironmental Cconditions in the ACES and which are within the scope of Environmental Services; or address otherwise any "Ineligible Work" ~~as set forth in Section 218~~ performed by or on behalf of the SFRA;

(B) Costs for Regulatory Oversight ~~oversight costs for any remedy implemented by the SFRA to the extent that the SFRA is required to install such remedy to achieve Regulatory Closure under this Agreement;~~

(C) all claims for personal injury or property damage to the extent caused by the SFRA or its contractors in the course of performing the Environmental Services;

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(D) all natural resource damage claims pursuant to 42 U.S.C. Section 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such damages were caused, or contributed to, by the negligent or wrongful actions of the SFRA, its contractors or its successors in interest;

(E) all costs arising from the performance of the Environmental Services which SFRA performs or causes to be performed;

(F) all costs of additional remediation required on or within the ACES as a result of a change in land use from that upon which the initial remedial action selection decision was based when Regulatory Closure was completed;

(G) all costs associated with the correction of any failure of any Navy-selected remedy implemented by the SFRA, but only to the extent such costs are directly attributable to the poor workmanship or negligence of the SFRA or its contractors in the performance of said implementation;

(H) all costs arising from the correction of any failure of any remedy both selected and implemented by the SFRA; and

(I) all costs arising from or associated with claims addressed in the Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(6) below.

(2) With regard to the ACES, the Parties agree that the SFRA has provided financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C. Section 9620(h)(3)(C)(ii).

(3) Except as otherwise expressly provided by this Agreement, this Agreement shall not be construed to limit, expand or otherwise affect any right that the SFRA may have, in the absence of this Agreement, to take legal action to require the Navy to act with respect to NRCs or Special Exclusions, or to seek damages resulting from the Navy's performance or failure to perform any actions with respect to NRCs or Special Exclusions. Except as otherwise expressly provided by this Agreement, this Agreement shall also not be construed to limit, expand or otherwise affect any right that the Navy may have, in the absence of this Agreement, to take legal action against the SFRA.

(4) Nothing in this Section creates rights of any kind in any person or entity other than the Navy and the SFRA.

(5) The SFRA and the Navy agree that the Environmental Services to be caused to be performed by the SFRA in accordance with the terms of this Agreement does not include any work relating to, nor is the SFRA responsible for indemnification of the Navy for

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

any work related to, NRCs or Special Exclusions except to the extent that the NRCs or Special Exclusions are adversely affected and aggravated by the negligent or wrongful actions of the SFRA, its contractors, or its successors in interest.

(6) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the SFRA under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past, present, and future claims or causes of action ("claims"), the SFRA, upon receipt of payment, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:

(A) Any cleanup, response or corrective action associated with or as a result of environmental conditions in the ACES and within the scope of Environmental Services, ~~for Known Conditions and Insured Unknown Conditions and;~~

(B) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to NRCs or Special Exclusions; and

(C) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a CERCLA ROD except to the extent such disturbance or alteration is necessary to comply with the AOC as a result of potential or actual remedy failure or as a result of addressing Environmental Conditions other than those addressed by the cover, cap, or other environmental remedy. In no event shall SFRA be entitled to payment for claims, costs or damages for work or costs incurred pursuant to this Agreement for which it has already been paid pursuant to the Agreement.

(D) Any personal injury or property damage to the extent that it did not occur prior to the date of execution of this agreement by both parties.

Section 712. Liability and Insurance

a. The SFRA shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.

b. The SFRA will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If a worker's compensation or similar insurance policy is obtained, any such insurance policy will provide a waiver of subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to any third party rights of action that the

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

SFRA may have against the Navy.

c. General Liability Policy Provisions: All general liability insurance which the SFRA carries or maintains, or causes to be carried or maintained, under this Section 712 will be in such form, for such amounts, for such periods of time and with such insurers as the Navy may reasonably approve. Such Navy approval shall not be unreasonably withheld or delayed. All policies issued for general liability insurance required by this Agreement will provide that no cancellation will be effective until at least thirty (30) days after the Navy receives written notice thereof. Any such policy shall also provide a waiver of subrogation of any claims against the Navy, and its officers, agents, or employees. In no circumstances will the SFRA be entitled to assign to a third party any rights of action which the SFRA may have against the Navy. The Navy acknowledges and accepts the SFRA's self-insurance coverage for general liability, worker's compensation, or for any similar coverage.

d. Delivery of Policies: The SFRA will provide the Navy with a certificate of insurance or statement of self insurance evidencing the insurance required for the SFRA. At least thirty (30) days before any such policy expires, the SFRA shall also deliver to the Navy a certificate of insurance evidencing each renewal policy covering the same risks.

e. Environmental Insurance Requirements. Prior to the conveyance of any portion of the ACES to SFRA, SFRA shall procure environmental insurance policies approved by the Navy, which approval shall not be unreasonably withheld, providing "cost cap" or "stop loss" coverage for cost overruns associated with implementing the work required by the CERCLA RODs and further providing pollution legal liability or similar coverage, to the extent available, for ~~Pollution-Environmental~~ Conditions not addressed by the CERCLA RODs and for third party liability claims associated with ~~Environmental Pollution~~ Conditions.

Section 713. Reports

To assure that the Navy will receive from the SFRA the appropriate documentation necessary for the Navy to execute the CERCLA covenant, the Navy may request that the SFRA provide additional information concerning the environmental condition of the ACES reasonably necessary to enable the Navy to execute the CERCLA covenant. As soon as possible after any such request is made, if the SFRA can reasonably obtain and release such information, the SFRA shall provide the Navy access to any documents containing such requested information. In any event, the SFRA agrees to provide the Navy such access within ten (10) business days of the Navy's information request.

Section 714. Officials Not to Benefit

The SFRA acknowledges that no member or delegate to the United States Congress, or Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive any benefit that may arise therefrom.

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

Section 715. Representations

a. The Navy represents that:

(1) it is fully authorized to enter into this Agreement;

(2) the SFRA may rely on the data provided to the SFRA or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and

(3) the information provided to the SFRA by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

b. The SFRA represents that:

(1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and,

(2) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act, and,

(3) any provision of this Agreement that states or implies that the Navy will reimburse the SFRA for any costs incurred, or that the Navy will perform any actions with respect to NRCs or Special Exclusions, are wholly subject to the Anti-Deficiency Act.

Section 716. Excess Funds

Funds, as provided for in Section 401 and Section 502 above, are only to be expended for the purposes for which they were provided for under the terms of this Agreement. In accordance with the procedures outlined in 32 CFR 33.50, any funds paid to the SFRA that remain unencumbered for allowable costs, after all regulatory approvals have been obtained and the CERCLA warranty has been issued by the Navy, are funds which may be determined to be excess by the Navy and not authorized to be retained by the SFRA and upon written demand by the Navy, the SFRA must immediately refund to the Navy those excess funds.

Article VIII APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program.

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Accordingly, as it may affect the rights, remedies, and obligations of the United States, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, those authorities will govern.

Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

A r t i c l e I X PROCUREMENT

Section 901. SFRA Contracts

The SFRA's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The SFRA must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

Section 902. Preference for Local Residents

a. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

b. Definition. In this section, the term "base closure law" means the following:

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(2) The Defense Base Closure and Realignment Act of 1990, as amended (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

c. Applicability - Any preference given under subsection (a) shall apply only to contracts entered into after the base closure law was enacted.

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
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**Article X
TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION**

Section 1001. Dispute Resolution

a. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.

b. A dispute shall be considered to have arisen when one Party sends the other Party written notice of such dispute. Such written notice will include, to the extent available, all of the following information: the amount of monetary relief claimed or the nature of other relief requested; the basis for such relief, and; any documents or other evidence pertinent to the claim.

c. If a dispute arises under this Agreement, the Parties agree to attempt to resolve the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days after a notice of dispute is received. Should staff-level discussions not resolve the dispute within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to elevate the dispute to designated mid-level management. Mid-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties agree to then raise the issue with their respective senior-level management. Senior -level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to determine the person(s) to represent it at any meeting convened under this section.

d. If the dispute cannot be resolved after exhausting the remedies under Section 1001c. above, the dispute shall be appealed to the Director of the Base Realignment and Closure Office at the address indicated in Section 707 above. Such appeal must be written, and contain all of the documentation and arguments necessary for a decision. The Director shall render a decision in a timely manner. If the SFRA disagrees with the Director's decision, the SFRA may, by providing notice to the other Party, pursue whatever remedies that the SFRA may have available at law or in equity.

e. To the extent that there is a conflict between the Dispute Resolution provisions or process set forth herein and any dispute resolution provisions or process contained in the Amended FFA, the dispute resolution provisions and process of the Amended FFA shall control.

Section 1002. Enforcement

Either party may enforce this Agreement according to its terms. Without limiting either

HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

party's enforcement rights, in accordance with the terms of 32 CFR Section 33.43, Enforcement, for noncompliance of Grantee or subgrantee shall include:

- a. Temporarily withholding cash payments pending correction of the deficiency by the SFRA or Sub-grantee or more severe enforcement action by the awarding agency;
- b. Disallowing (denying both use of funds and matching credit for) all or part of the cost of the activity or action that is not in compliance;
- c. Wholly or partly suspending or terminating the current award for the SFRA's or the Sub-grantee's program. Any award termination will be conducted under Section 1003 below.
- d. Withholding further awards under this Agreement; and
- e. Taking other remedies that may be legally available.

Section 1003. Termination

a. This Agreement may terminate by its own terms under Section 701 above, or by a party under this Section 1003.

b. Reserved.

c. Reserved.

d. If a Party materially breaches this Agreement, the non-breaching party, to preserve its right to terminate, must provide the breaching party with a notice of intent to terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has expired. The existence of a material breach shall be finally determined under the dispute resolution procedures specified in Section 1001 above. Notwithstanding anything to the contrary in this Section 1003.d, the breaching party shall have ten (10) days to cure a breach that arises from any failure to make a required payment under this Agreement.

e. If this Agreement is terminated for reasons other than those set forth in Section 701 above, the SFRA shall immediately:

(1) Stop work;

(2) Place no further subcontracts or orders (referred to as subcontracts in this

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HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE AGREEMENT

clause) for materials, services, or facilities;

(3) Terminate all subcontracts;

(4) With approval or ratification to the extent required by the Navy, settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts; any such approval or ratification will be final;

(5) Take any action that may be necessary to protect human health or the environment against imminent and substantial endangerment thereto, or to protect and preserve any Navy-owned property at the ACES, as the Grant Officer may direct; and

(6) Return or cause to be returned to the Navy any funds held by the SFRA or the Escrow Agent not otherwise committed for allowable costs of payment for Environmental Services performed in accordance with this Agreement.

The SFRA agrees to insert such provisions in its contracts, and to require that such provisions be placed in any subsequent subcontracts between the SFRA's contractors and their subcontractors, so as to effect the provisions above.

f. If this Agreement is terminated under this Section 1003, the status of the parties with respect to Eenvironmental Conditions at the ACES shall revert to as the status that existed immediately preceding the effective date of this Agreement.

g. A party's right to terminate, and any determination of funds available for reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in Section 1001 above.

Section 1004. Effects of Suspension and Termination

a. Except for allowable costs in accordance with 32 CFR Section 33.22 and the applicable OMB Circulars, any costs to the SFRA resulting from obligations incurred by the SFRA during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently authorizes such costs. Any other SFRA costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:

(1) the costs result from obligations which were properly incurred by the SFRA before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and

(2) the costs would be allowable if the Agreement were not otherwise suspended or expired at the end of the funding period in which the termination takes effect.

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

b. The enforcement remedies specified in this section do not relieve the SFRA or its subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25, including the restrictions on entering into a covered transaction with any party which is debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

**Article XI
LEGAL AUTHORITY**

Section 1101. Legal Authority

The parties hereby represent and warrant that they are under no existing or reasonably foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and conditions of this Agreement. The parties will promptly notify each other of any legal impediment that arises during the term of this Agreement that may prevent or hinder the party's abilities to perform its duties under this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement, by their authorized representatives, hereby cause this Agreement to be executed.

SAN FRANCISCO REDEVELOPMENT AGENCY

By: _____
NAME:
TITLE: Director

Dated: _____

THE UNITED STATES OF AMERICA

By: _____
Mr. Robert Griffin
Assistant Commander for Acquisition, Naval Facilities
Engineering Command

Dated: _____

**HUNTERS POINT NAVAL SHIPYARD EARLY TRANSFER COOPERATIVE
AGREEMENT**

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
AND THE
STATE OF CALIFORNIA
AND THE
-DEPARTMENT OF THE NAVY

IN THE MATTER OF:)
)
-U. S.)
Department of the Navy) FEDERAL FACILITY AGREEMENT
Naval Station) CERCLA Section 120
Treasure Island -Hunters)
Point Annex)

 AMENDMENT NO. 1 RELATED TO
 EARLY TRANSFER PROPERTY REFERENCED
 IN FOSET 1

WHEREAS, on January 22, 1992, the Environmental Protection Agency (“EPA”), State of California Department of Toxic Substances Control (“DTSC”), San Francisco Regional Water Quality Control Board (“RWQCB”), and the Department of the Navy (“Navy”) entered into a Federal Facility Agreement (“the 1992 FFA”) requiring the Navy to identify, perform and complete all necessary response actions at the former Naval Station Treasure Island – Hunters Point Annex (“Hunters Point Naval Shipyard” or “HPS”) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”); and

WHEREAS, the Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and, in accordance with various base closure statutory authorities, the Department of Defense ("DOD") closed and plans to dispose of real and personal property at those facilities; and.

WHEREAS, the former ~~Hunter's Point Naval Shipyard~~ HPS was selected in 1991 for Base Realignment and Closure; and

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WHEREAS, the Navy is authorized to dispose of real and personal property on ~~Hunters Point Naval Shipyard~~ (“HPS”), to the City of San Francisco or to a local reuse organization approved by the City, in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103- 160). The ~~San Francisco Redevelopment Agency~~ (“SFRA”) is a local reuse organization approved by the City of San Francisco to accept conveyance of HPS property in accordance with the authorities set out above; and

WHEREAS, the Navy and SFRA did execute and enter into that certain *Conveyance Agreement Between the United States of America, Acting by and through the Secretary of the Navy, and the San Francisco Redevelopment Agency for the Conveyance of Hunters Point Naval Shipyard*, dated March 31, 2004 (“Conveyance Agreement”); and

WHEREAS, the ~~City of San Francisco Redevelopment Agency~~ (“SFRA”) has requested an early transfer of HPS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G- as described in the Finding of Suitability for Early Transfer, Former Hunters Point Shipyard, California (“FOSET”) 1 within the Hunters Point Shipyard Superfund Site, which will be referred to as the “Early Transfer Property”; and

WHEREAS, the Navy and SFRA have entered into an Early Transfer Cooperative Agreement (“ETCA”) as a vehicle for the Navy to fund SFRA to complete any CERCLA response actions and to perform associated Long Term Obligations on the Early Transfer Property necessary to protect human health and the environment and to facilitate reuse and to commence with redevelopment; and

WHEREAS, EPA Region IX, DTSC and ~~RWQCB~~ ~~have~~ ~~RWQCB~~ ~~have~~ entered into an Administrative Order on Consent (“AOC”) with SFRA and HPS Development Co., LP (“AOC respondents”) which provides for the completion by the AOC respondents of CERCLA response actions and performance by the AOC respondents of associated Long Term Obligations on the Early Transfer Property for the protection of human health and the environment; and

WHEREAS, the Navy has prepared a Covenant Deferral Request requesting that the Representative of the EPA Administrator approve the Early Transfer, with the concurrence of the Governor of California, in accordance with CERCLA Section 120(h)(3)(C)(i)(I)-(IV) inclusive, which will demonstrate that the Early Transfer Property is suitable for transfer prior to the completion of all necessary response actions and for the reuse intended by the transferee; and

WHEREAS, the proposed CERCLA covenant deferral on the Early Transfer Property will be based upon land use restrictions to be included in the federal deed and the state covenant to restrict use of property (“CRUP”); and

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WHEREAS, SFRA will perform work pursuant to the ETCA and the AOC, certain Navy obligations under the 1992 FFA as to the Early Transfer Property should be suspended, revised, or otherwise changed as set forth in this Amendment; and

THEREFORE, based on the information available to the undersigned Parties on the effective date of this Amendment to the 1992 FFA, and without trial or adjudication of any issues of fact or law, and in accordance with Section 29 (“AMENDMENT OR MODIFICATION OF AGREEMENT”) of the 1992 FFA, the Parties agree to amend the 1992 FFA, as provided below. -All terms and conditions of the 1992 FFA remain in effect and in full force regarding all property within the Hunters Point Shipyard Superfund Site, including the Early Transfer Property, unless expressly suspended or revised in this Amendment.

I. Section 3 (DEFINITIONS) of the 1992 FFA is amended to add Section 3.2 consisting of the following definitions:

A. “1992 FFA” shall mean the Federal Facility Agreement and all Appendices incorporated into the Agreement for Hunters Point Shipyard that became effective on January 22, 1992, between EPA, the Navy, DTSC, and RWQCB; and

B. “Administrative Order on Consent” or “AOC” shall mean the Administrative Order on Consent (CERCLA Docket No. xxxx) between EPA, DTSC, and the RWQCB and the AOC respondents that provides for the completion by the AOC respondents of response actions and associated Long Term Obligations required by the Parcel B and G RODs on the Early Transfer Property for the protection of human health and the environment; and

C. “Amendment No. 1 to the 1992 FFA” or “Amendment”, or “FFA Amendment” shall mean this document which supplements and, in relation to the Early Transfer Property only, revises the 1992 FFA, between EPA, the Navy, DTSC, and RWQCB.

D. “Completion of Remedial Action” shall mean the point in time when the AOC respondents have performed all necessary CERCLA response actions, including establishment of all required Institutional Controls, on a given site or parcel of property, except for Long Term Obligations, and EPA has issued a Certificate of Completion of Remedial Action pursuant to Section (xx) of the AOC.

Commented [rc1]: Note to EPA/DTSC: This definition will be revised to conform to the final definitions in the ETCA and AOC.

E. “DTSC” shall mean the California Department of Toxic Substances Control,.

F. “Early Transfer Property” shall mean HPS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G described in the FOSET, and Early Transfer Cooperative Agreement (“ETCA”) and depicted in Exhibit 1. *NOTE: This appears to be the same as the “ACES” under the*

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ETCA – should that term be used instead?

G. “ETCA” shall mean the Early Transfer Cooperative Agreement, effective xxxx, entered into by the Navy and FFSRA pursuant to title 32, Code of Federal Regulations, Parts 21 through 33 (32 CFR Parts 21 through 33)..

H. “Institutional Controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination (including but not limited to MEC) and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

I. “Land Use Control Remedial Design” (“LUC RD”) shall mean the LUC RD report(s) prepared as part of CERCLA Remedial Design documentation to refine institutional controls and specify procedures and responsibilities for their implementation.

J. “Long Term Obligations” shall mean any requirement of a ROD or the AOC that extends beyond the Completion of Remedial Action, including but not limited to, long-term review and monitoring; implementation and enforcement of Land Use Controls; and other operation and maintenance activities, reporting, and performance of additional response actions, if needed.

K. “Navy Retained Conditions” means Unexploded Ordnance ; Military Munitions; chemical, radiological, or biological warfare agents; and Radiological Materials.

K. —

L. “Navy ObligationsSpecial Exclusions” means:

L. The term “Special Exclusions” means any of the following:

i) Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the Parcels B and/or G CERCLA RODs, except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:

A. The negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations;

Commented [rc2]: Note to EPA/DTSC: This definition will be revised to conform to the final definition in the ETCA/TSRS.

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B. Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Navy Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in paragraphs 2 through 7 of this Section;

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ii) Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.

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iii) Activities and associated costs, other than those required to implement the portions of the RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.

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iv) The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the RODs issued by the Navy.

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v) Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

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vi) (Place holder for any additional exclusions in the insurance policies mutually agreed by Navy and SFRA).

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The performance of CERCLA five year reviews for years 2013 and 2018 for remedies selected in the Parcel B and G RODs; and
Evaluating the need for amendments to and Explanations of Significant Differences (ESDs) from the Parcel B and G RODs, preparing and issuing such documents, and conducting any additional remedial action required by such documents except to the extent attributable to any of the following:
the negligence of the SFRA or any party acting on its behalf, including but not limited to noncompliance with or failure to adequately enforce approved CERCLA institutional control land use restrictions;
requests by the SFRA or other party acting on behalf of the SFRA for modification of the remedies selected in the Parcels B and G RODs that are not required as a result of a Navy Remedy Failure, or Navy Retained Condition, and.

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~~unknown conditions discovered during the course of remediation.~~

M. “Property Transfer” shall mean the transfer of the Early Transfer Property by deed from the Navy to SFRA.

L.N. “Radiological **Materials**” shall mean solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy’s work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. The term “Radiological Materials” does not include products commonly used in non-military applications such as radioluminescent signs, and household smoke detector components.

M.O. “‘Records of Decision’ (‘ROD(s)’) for Parcels B and G” shall mean that certain CERCLA Amended Record of Decision for Parcel B dated January 14, 2009, and that certain CERCLA Record of Decision for Parcel G dated February 18, 2009, including all attachments thereto.

N.P. “RWQCB” shall mean the Regional Water Quality Control Board, San Francisco Bay Region, and any successor agencies of the State.

O.Q. “SFRA” shall mean the San Francisco Redevelopment Agency, a public body, corporate and politic, organized and existing under the Community Redevelopment Law of the State of California and a local reuse organization approved by the City of San Francisco to accept conveyance of HPS property in accordance with Section 2824(a) of Public Law 101-510 as amended.

P.R. “State” shall mean the State of California.

Q.S. “United States” shall mean the United States of America.

II. The following obligations and rights of the Navy in respect to the Early Transfer Property shall be suspended or otherwise changed as provided in this Amendment: Section 6 (“WORK TO BE PERFORMED”), Section 7 (CONSULTATION), Section 8 (DEADLINES), Section 9 (EXTENSIONS), Section 11 (EMERGENCIES AND REMOVALS), Section 12 (DISPUTE RESOLUTION), Section 31 (COVENANT NOT TO SUE AND RESERVATION OF RIGHTS), Section 36 (EFFECTIVE DATE AND PUBLIC COMMENT), provided however, that none of these Sections shall be suspended with respect to any Navy Retained Conditions or Special Exclusions on the Early Transfer Property or other parcels of the former Hunters Point Shipyard installation.

Commented [rc4]: Note to EPA/DTSC: The language in (ii) was added to address the EPA/DTSC concern re Navy responsibility for ROD Amendments and ESDs set forth in their comment on Section 6.5.1.

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Commented [rc5]: Note to EPA/DTSC: This definition will be revised to conform to the final definition in the ETCA.

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III.- Section 6 (WORK TO BE PERFORMED) of the 1992 FFA is amended to add the following sections as follows:

6.5. ~~___~~ -ASSUMPTION OF WORK ON EARLY TRANSFER PROPERTY BY AOC RESPONDENTS

6.5.1. ~~___~~ Under the terms of the ETCA, the Navy has agreed to provide funds to SFRA in exchange for SFRA's agreement to assume the Navy's responsibilities to complete the CERCLA response actions required under the AOC on the Early Transfer Property and to perform associated Long Term Obligations. In furtherance of the agreements reached between the Navy and SFRA in the ETCA and the AOC respondents' commitments contained in the AOC, EPA, DTSC, and RWQCB agree that the AOC respondents assume ~~full~~ responsibility for completion of remedial action and associated Long Term Obligations required by the Parcels B and G RODs and associated Remedial Design reports pursuant to the ETCA and AOC. ~~The Navy shall remain responsible under the FFA for implementing evaluating the need for amendments and Explanations of Significant Differences (ESDs) for the Parcel B and G RODs, as well as preparing such documents and implementing any additional work.~~

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6.5.2. The Navy agrees that it will conduct necessary response actions and associated Long Term Obligations addressing Navy Retained Conditions and Navy Obligations ~~Special Exclusions~~. The Navy will notify EPA, DTSC, and RWQCB upon receipt of a claim by SFRA that an environmental condition that it has encountered is a Navy Retained Condition or Special Exclusion. In the event that there is a dispute between SFRA and the Navy ~~under the ETCA~~ concerning whether a particular environmental condition is ~~an SFRA responsibility or~~ a Navy Retained Condition or Special Exclusion, the dispute shall be resolved in accordance with the Dispute Resolution provisions of the AOC for purposes of defining Navy obligations under the FFA. If EPA determines that the condition is a Navy Retained Condition or Special Exclusion, the Navy shall, within 45 calendar days of the receipt of the final EPA determination submit a schedule to EPA, DTSC, and RWQCB for the required action pursuant to the 1992 FFA, or authorize SFRA to conduct such work under the AOC schedule. Nothing herein shall be construed to affect or impair the Navy's rights to pursue dispute resolution concerning whether certain work or environmental conditions are within the scope of the SFRA's obligations pursuant to Section 1001 of the ETCA and 32 CFR Section 22.815. Nothing herein shall be construed to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. Section 1341).

Commented [rc6]: Note to EPA/DTSC: The Navy proposes to address the ROD Amendment/ESD issue in the definition of "Special Exclusions" rather than in this paragraph. See above.

Commented [rc7]: Note to EPA/DTSC: Bob Elliott made the following comment on this section of text: "Is there or should there be a provision for dealing with issues that may need to be completed in a timelier manner due to potential health risks." The Navy addresses this concern in its proposed revisions to Section 11 of the FFA (see Paragraph V of these amendments.

Commented [rc8]: Note to EPA/DTSC: This addition of this sentence will adequately address the Navy's concern about overlapping dispute resolution procedures in the ETCA, AOC, and FFA Amendments because it reserves the Navy's rights to pursue dispute resolution under the ETCA regarding the contractual scope of the work to be performed under the ETCA..

6.5.3. The Navy acknowledges its ultimate liability under CERCLA to complete all necessary response actions at the Early Transfer Property, in accordance with

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CERCLA. The parties acknowledge that the AOC respondents shall perform response actions for the cleanup of the Early Transfer Property pursuant to the ETCA and the AOC.

6.5.4 ~~—~~The Navy's FFA obligations suspended under Section II of this Amendment shall resume for HPS Parcel B, with the exception of IR Sites 7 and 18 and the radiologically-impacted area around Building 140, and HPNS Parcel G upon the date of ETCA termination ~~if prior to the end of the ETCA term.~~

6.5.5 ~~—~~EPA, in consultation with DTSC, and RWQCB, shall take appropriate actions pursuant to the terms of the AOC, ~~which may include assessing stipulated penalties,~~ to enforce the AOC against the ~~AOC Respondent~~respondent(s) prior to issuing a Notice of Intent to Find Default under the AOC relating to a particular parcel or site. EPA, DTSC, and RWQCB shall: 1) consult with the Navy throughout any AOC dispute resolution process relating to a Notice of Intent to Find Default against the AOC respondents for all or a ~~portion of~~ a particular parcel or site, 2) provide the Navy with notice and the opportunity to participate ~~in all meetings between the regulators and the AOC respondents~~ in the dispute resolution process, 3) provide the Navy with copies of all documentation and correspondence relating to the AOC dispute resolution process, and 4) provide the Navy with notice and timely opportunities to submit written comments to the parties in the course of the AOC dispute resolution process. The Navy's FFA obligations relating to the particular parcel or site shall remain suspended until the AOC dispute resolution procedure is completed and a Finding of Default has been issued under the AOC. The Navy's suspended FFA obligations shall resume upon the Navy's receipt of a Finding of Default

6.5.6. In the event of a final Finding of Default, the Navy shall complete CERCLA response actions on the Early Transfer Property for the particular parcel or site subject to the Finding of Default and perform associated Long Term Obligations for all response action decisions selected before Navy resumption of the work. Notwithstanding the above, the Navy may, within 30 working days of the issuance of a Finding of Default propose to EPA, DTSC, and the RWQCB modifications to the relevant Parcel B and G ~~Remedial Action (RA)~~ Work Plan(s) prepared by the AOC respondents. To the extent that EPA, DTSC, and RWQCB and the Navy do not agree with respect to such a Navy proposal, any Party may initiate Dispute Resolution pursuant to Section 12 of the Amended FFA.

6.5.6. Within 30 working days after 1) the issuance of a final Finding of Default or 2) final resolution of a Navy proposal to modify relevant Parcel B and G RA Work Plans as described in subsection 6.5.5 above, whichever comes later, the Navy will provide EPA, DTSC, and the RWQCB with its schedule for the implementation of all response actions remaining to be performed on the Early

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Transfer Property. If the Parties fail to agree within 45 working days from receipt of the proposed schedule for implementation, the matter shall immediately be submitted for dispute resolution pursuant to Section 12 of the Amended FFA.

6.5.78. Notices/Management Group Meetings

Notice of activities under this FFA Amendment shall be provided to the following addresses:

(1) ____-For the Navy

Keith Forman
Hunters Point Shipyard BRAC Environmental Coordinator
BRAC Program Management Office West
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310
Tel (619)-532-0913
Fax: (619) 532-xxxx

(2) ____-For EPA:

Assistant Director
Federal Facilities and Site Clean-up Branch
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105
Tel (415) 972-____ Fax (415) 947 3520

EPA Project Coordinator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105
Tel (415) 972-____ Fax (415) 947 3520

(3) ____-For DTSC:

Anthony J. Landis, P.E.
Chief, Northern California Operations
Office of Military Facilities
Department of Toxic Substance

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Commented [rc13]: Note to DTSC: Could you please provide the correct name and title?

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8800 Cal Center Drive
Sacramento, CA 9526-3200
Tel (916) 255 3732
Fax (916) 255 3734

Project Coordinator
DTSC
~~8800 Cal Center Drive~~
~~Sacramento, CA 95746~~
~~Berkeley, Ca~~
Tel ~~(916) 255 6403~~
Fax ~~(916) 255 3734~~

Commented [rc14]: Note to DTSC: Could you please provide the correct address!

(4) _____ For RWQCB:

Project Coordinator

6.5.9. Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.

IV. Section 7 (CONSULTATION: REVIEW AND COMMENT PROCESS FOR DRAFT AND FINAL DOCUMENTS) is suspended in regards to the Navy's consultation responsibilities for the Early Transfer Property except for the following subsections:

7.11 -Under the process and schedule contained in the AOC, the AOC respondents will submit for review, comment, and approval by EPA, DTSC and RWQCB all documents, deliverables, reports, and other information necessary to implement response actions on the Early Transfer Property and achieve Completion of Remedial Action. Copies of these documents, deliverables, reports and other necessary information will be provided to the Navy pursuant to the ETCA and AOC.

Commented [rc15]: Note to EPA/DTSC: The Navy is defining what documents it wants copies of and for what purpose in the draft TSRS. We anticipate that corresponding changes will ultimately be made in the ETCA and AOC once the parties agree on what documents will be provided and for what purposes.

7.12 EPA, DTSC, and RWQCB will provide copies of their comments on CERCLA primary and secondary documents to the Navy at the same time that they provide the comments to the AOC respondents.

V. Section 11 (EMERGENCIES AND REMOVALS) is amended to add the following subsection with respect to the Early Transfer Property:

11.7. SFRA and HPS Development Co., LP, under the terms of the ETCA and AOC, shall be responsible for providing notice on their discovery or awareness of a

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release of a hazardous substance or an emergency situation. Nonetheless, to the extent that Navy personnel and/or its contractors become aware of an emergency or other situation that may present an immediate endangerment to public health, welfare or the environment at or near the Early Transfer Property, the Navy shall notify EPA, RWQCB and DTSC in accordance with Section 11.1 of the 1992 FFA. Upon -the Navy's discovery, or after receipt of notice from SFRA, HPS Development Co., LP, EPA or DTSC of such information, the Navy shall use its best efforts to contact and confer with SFRA and ensure that either the Navy or SFRA will conduct any necessary emergency response action required on the Early Transfer Property in a timely manner. For those situations that involve and/or pertain to a Navy Retained Condition, the Navy will take on all responsibilities outlined in Sections 11.1 to 11.6 of the 1992 FFA upon the Navy's discovery, or after receipt of notice from SFRA, HPS Development Co., LP, EPA or DTSC, whichever occurs first. If the Navy and SFRA cannot agree in a timely manner as to who is responsible for responding to an emergency situation, the Navy shall undertake appropriate emergency response action as provided in Section 11 of the FFA.

Commented [rc16]: Note to EPA/DTSC: The additional language that the Navy added to this section were intended to address EPA and DTSC concerns about clarifying Navy responsibility for emergency response actions.

VI. Section 12 (DISPUTE RESOLUTION) is amended to add the following subsections:

- 12.14 The Parties agree that while the AOC is in effect, the AOC dispute resolution process is the exclusive dispute process between the AOC respondents and EPA, DTSC, and RWQCB related to all responsibilities that the AOC respondents have agreed to assume for the Navy under the AOC including the determination that certain work is a NRC. The Navy agrees that a resolution of a dispute between the AOC respondents and EPA, DTSC, and the RWQCB under the AOC may not be disputed by the Navy, EPA, DTSC, or the RWQCB under Section 12 of the 1992 FFA. Nothing herein shall be construed to affect or impair the Navy's rights to pursue dispute resolution pursuant to Section 1001 of the ETCA and 32 CFR Section 22.815 concerning whether certain work or environmental conditions are within the scope of the SFRA's obligations under the ETCA.
- 12.15 Section 12 of the 1992 FFA remains in effect relative to violations of the 1992 FFA and this Amendment relating to Navy Retained Conditions and Special Exclusions.
- 12.16 In the event of a default under the AOC, EPA will provide a notice to the Navy by sending a copy of the Notice of Intent to Default provided for in the AOC. The Navy may submit comments on the Notice within 45 calendar days of its receipt for EPA to consider during discussions and/or a dispute with SFRA.

Commented [rc17]: Note to EPA/DTSC: The addition of this sentence will adequately address the Navy's concern about overlapping dispute resolution procedures in the ETCA, AOC, and FFA Amendments because it reserves the Navy's rights to pursue dispute resolution under the ETCA regarding the contractual scope of the work to be performed under the ETCA..

Commented [rc18]: Note to EPA/DTSC: We don't understand why EPA proposed to delete this section based upon their comment that "This may not be the proper time period." Was this intended to suggest that 45 days is not the correct time period? It appears that retaining this paragraph is still appropriate. Please clarify the comment

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VII. Section 31 (COVENANT NOT TO SUE AND RESERVATION OF RIGHTS) is amended to add the following subsection related exclusively to the Early Transfer Property:

31.3. —In consideration of the Navy’s compliance with this Amendment and the 1992 FFA, and based on the information known to the Parties or reasonably available on the effective date of this Amendment, EPA, the Navy, DTSC, and RWQCB agree that compliance with this Amendment and the 1992 FFA shall stand in lieu of any administrative, legal, and equitable remedies against the Navy available to them regarding the releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Early Transfer Property which are the subject of the AOC or ETCA.

VIII. Section 36 (EFFECTIVE DATE AND PUBLIC COMMENT) is amended to add the following subsection applicable on to the Early Transfer Property:

36.4. The FFA Amendment becomes effective after all Parties have signed this Amendment, and upon approval of the Covenant Deferral Request by EPA, with the concurrence of the State. When these conditions are met, EPA shall promptly notify all Parties in writing of the effective date.

IX.- Section 39 (INSTITUTIONAL ~~CONTROLS~~ CONTROLS) shall be added to the 1992 FFA.

39.1. As a condition to deferring the CERCLA Covenant, land, water, and resource use restrictions required by the Parcels B and G RODs will be addressed as provided in those RODs, the Parcels B and G LUC RDs, and the FOSET. The Navy and DTSC will establish the land, water, and resource use restrictions on the Early Transfer Property, by entering into a Covenant to Restrict the Use of Property (“CRUP”), prior to the conveyance of the Early Transfer Property. The restrictions contained in the CRUP also will be included in the federal quitclaim deed(s) transferring the Early Transfer Property to SFRA.

39.2. These restrictions in the CRUP and the federal deed(s) will be placed over the property as a condition of deferring the CERCLA covenant in order to ensure the protection of human health and the environment prior to completing all remedial actions. They shall also serve as key components of the remedial action required by the RODS for Parcels B and G. The Navy shall report any activities prohibited by the CRUP and federal deed known by it or reported to it and take appropriate action as provided in the Parcels B and G LUC RDs.

X. Section 40 shall be added to the 1992 FFA:

40. ____—SELECTION OF RESPONSE ACTIONS

40.1. ____—Notwithstanding that the AOC respondents have assumed certain Navy responsibilities under the ETCA, consistent with Sections 7, 8, 9, and 12 above, the Navy and EPA shall be responsible for selecting any necessary CERCLA response actions required in addition to those required by the RODs for Parcels B and G.

XI. Section 41 shall be added to the 1992 FFA:

41. ____—EFFECT OF AMENDMENT NO.1 TO THE 1992 FFA

41.1. ____—Nothing in this Amendment to the 1992 FFA shall modify any term or condition of the 1992 FFA unless expressly set forth herein. Nothing in this Amendment creates any third party rights.

41.2. ____—Nothing in this Amendment to the 1992 FFA shall require EPA or the State to perform response actions at the Early Transfer Property.

41.3. ____—Nothing in this Amendment to the 1992 FFA shall affect whatever ability the Navy has to contract or agree with third parties to conduct response actions for Navy Obligations Navy Retained Conditions or Special Exclusions.

41.4. ____—Nothing in this Amendment to the 1992 FFA will be precedent for agreements concerning any other Superfund Site.

XII. ____-Section 42 shall be added to the 1992 FFA:

42. ____-NAVY NOTICE AND RESPONSIBILITIES IN EVENT OF MATERIAL BREACH BY SFRA OR HPS DEVELOPMENT CO., LP, OR ESCA DISPUTE.

42.1. ____—The Navy shall notify EPA in writing within 15 calendar days, with a copy to DTSC and RWQCB, upon learning of any information that may constitute a material breach by SFRA OR HPS Development Co., LP, under the ETCA, or within 15 calendar days of a dispute arising under the ETCA.

AUTHORIZED SIGNATURES

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the entity he or she represents to enter into the terms of this First Amendment to the 1992 FFA and to legally bind such entity to this First Amendment to the 1992 FFA.

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IT IS SO AGREED:

by

UNITED STATES DEPARTMENT OF NAVY

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____ Deputy Assistant Secretary of the Navy (Environment)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Deputy Regional Administrator
U.S. Environmental Protection Agency Region IX

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CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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Office of Military Facilities
California Department of Toxic Substances Control

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

Executive Officer
California Regional Water Quality Control Board

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APPENDIX 9

Technical Specifications and Requirements Statement

1.0. INTRODUCTION

In accordance with the terms of the Early Transfer Cooperative Agreement (ETCA), this Technical Specifications and Requirements Statement (TSRS) provides the U.S. Department of the Navy's (Navy) general specifications for the San Francisco Redevelopment Agency (SFRA) ~~to conduct regarding the scope of remediation activities that comprise the~~ Environmental Services. ~~In performing~~ The Environmental Services consist of SFRA performing all actions required by the Environmental Regulatory Agencies to complete the Work (as defined in the AOC) required by the AOC in accordance with the procedures set forth in the AOC, except to the extent the AOC may require SFRA to take actions related to Ineligible Work or Special Exclusions. ~~SFRA shall comply with the CERCLA RODs, AOC and remedial design documents, along with other associated regulatory requirements. Nothing in this TSRS or elsewhere in the ETCA is intended to affect requirements set forth in the CERCLA RODs, the AOC, or associated remedial design documents, nor is this TSRS intended to provide the Navy the right to require under the ETCA specific remedies, scope of work, or components of a scope work, that are implemented by the SFRA to comply with the CERCLA RODs and AOC in performance of the SFRA's Environmental Services under the ETCA. References or provisions in this TSRS to, or describing ptions of requirements set forth in, the CERCLA RODs and/or AOC are intended only to provide a general framework for performance of the Environmental Services and an acknowledgement of the Parties' general understanding of what those Services will encompass. Except as otherwise indicated, capitalized terms used in this TSRS have the same meaning as set forth in the ETCA. If there is any conflict between the provisions of the TSRS on the one hand, and the provisions of the main body of the ETCA, AOC and/or CERCLA RODs on the other, the terms of the main body of the ETCA, AOC and/or CERCLA RODs shall govern.~~

~~Neither this TSRS nor any other provision of the ETCA is intended to provide a basis for the Navy to independently determine that the SFRA's manner of performance of the Work required under the AOC constitutes a breach, violation or failure to perform the Environmental Services under the ETCA unless if the Environmental Regulatory Agencies have not determined that SFRA's manner of performance is in violation of the AOC pursuant to the procedures set forth therein, address environmental scheduling and regulatory issues, and assume responsibility for Regulatory Closure of the Area Covered by Environmental Services (ACES).~~

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Neither this TSRS nor any provision of the ETCA is intended to provide the Navy a basis to require SFRA to perform any portion of the Environmental Services in any particular manner other than the manner specified by the Environmental Regulatory Agencies under the AOC. Once performed, the Environmental Services should also satisfy the~~These specifications are intended to be consistent with the requirements set forth in the Administrative Order on Consent (AOC), between SFRA, U.S. Environmental Protection Agency (EPA), California Department of Toxic Substances Control (DTSC), and San Francisco Bay Regional Water Quality Control Board (RWQCB) (the "Environmental Regulatory Agencies") and achieve Regulatory Closure. Further, Implementation of the Environmental Services will also satisfy~~shall be consistent with the remedial action requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and other applicable environmental laws and regulations regarding remediation of the ACES.

Terms used in this document are defined in the ETCA and the definitions presented in the ETCA apply. If there is any conflict between the TSRS on the one hand, and the ETCA, AOC and/or CERCLA RODs on the other, the terms of the ETCA, AOC and/or CERCLA RODs shall be applied.

1.1 Background

As provided in Section 301 of the ETCA, SFRA will conduct certain cleanup efforts at the ACES and the Navy will provide an appropriate level of oversight. This document is meant to support and be consistent with the ETCA. If inconsistencies are found between this TSRS and the ETCA, the ETCA shall control. If inconsistencies are not resolved after referring to the ETCA, the parties will work toward a resolution in accordance with Section 1001 of the ETCA.

1.2 Early Transfer and Cooperative Cleanup

The Navy and SFRA intend to complete an early transfer of the ACES pursuant to Section 120(h)(3)(C) of CERCLA in order to facilitate redevelopment of the property. SFRA's responsibilities for the ACES are described in the ETCA and specific remedial actions are summarized in the remedial activities table (see Table 1). Table 1 lists those environmental sites of the ACES requiring remediation by SFRA and generally describes the activities to be accomplished for each site. Activities described in Table 1 may be modified by SFRA pursuant to the ETCA, as long as said modifications do not affect SFRA's ability to achieve Regulatory Closure under the amount funded in the ETCA. Activities described in Table 1 will be undertaken in conjunction with redevelopment activities where the opportunity exists.

The SFRA shall complete Environmental Services for Environmental Conditions that are necessary to (1) comply with the CERCLA Records of Decision (ROD) and applicable Remedial Design Package reports (including Design Basis Report, Remedial Action Monitoring Plan [RAMP], Land Use Control Remedial Design [LUC RD], and Operation and Maintenance

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[O&M] Plan) and Remedial Action Work Plan (RAWP) reports, (2) address AOC requirements between SFRA and the Environmental Regulatory Agencies, (3) achieve Regulatory Closure throughout the ACES, and (4) comply with Long-term Obligations. The SFRA shall conduct and bear the cost of such services addressing Known Conditions and Unknown Conditions Discovered During the Course of Remediation even if such costs exceed the amount of ETCA funds provided and any insurance proceeds. Table 2 summarizes the breakdown of responsibility between SFRA and the Navy for the types of Environmental Conditions that may be found on the ACES.

1.3 Applicable and Relevant Documents

Appendix A contains a list of some of the key documents that are applicable and relevant to this TSRS. See the HPNS Administrative Record files for additional information that may be applicable or relevant.

1.4 Definitions

1.4.1 Environmental Conditions

The term “Environmental Condition(s)” means a discharge, release, or threatened discharge or release into the environment of a hazardous substance, waste, oil, or petroleum product within the scope of any of the following:

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9601 et seq.;
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq.;
- California Hazardous Waste Control Act (California Health and Safety Code Sections §25100 et seq.);
- California Hazardous Substances Account Act (California Health and Safety Code Sections §25300 et seq.);
- Porter Cologne Water Quality Control Act (California Water Code §13000 et seq.);
- Or similar federal or state environmental law.

1.4.2 Environmental Services

The term “Environmental Services” means performance of the remediation activities necessary to achieve Regulatory Closure and comply with Long-Term Obligations with respect to (i) Known Conditions and Unknown Conditions Discovered During the Course of Remediation (including “replacement” remedial covers [soil, asphalt, and/or concrete] that replace initial remedial covers installed pursuant to the RODs), even if the funds provided under this Agreement, and any insurance proceeds from the Environmental Insurance Policies, have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (ii) Unknown Conditions Discovered Outside the Course of Remediation for the chemicals listed in tables 3a and 3b, even if the funds provided under this Agreement, and any insurance proceeds

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from the Environmental Insurance Policies, have been exhausted and even if the term of the Environmental Insurance Policies has expired; and (iii) Unknown Conditions Discovered Outside the Course of Remediation, for chemicals not listed in tables 3a and 3b, but only to the extent such activities are funded by the Environmental Insurance Policies or to the extent funding is unavailable as a result of the failure of SFRA or a named insured to comply with the requirements of the Environmental Insurance Policies. *[Note: this last provision is subject to satisfactory terms of the environmental insurance policies regarding the definition of coverage for known and unknown conditions discovered during the course of remediation.]*

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The term Environmental Services does not include the performance of any activities related to the following: Navy Retained Conditions; Ineligible Work; or Special Exclusions.

1.4.3 Known Conditions

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The term “Known Conditions” means an Environmental Condition involving one or more chemicals of concern (1) identified as requiring remedial action at an Installation Restoration (IR) site or other location specified in the CERCLA RODs, or (2) identified as requiring corrective action by a Petroleum Corrective Action Plan (see ETCA Section 232). *[Note: condition (2) to be removed if the Navy completes its PCAP obligations to the satisfaction of the RWOCB prior to transfer.]*

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1.4.4 Navy Remedy Failure

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The term “Navy Remedy Failure” means any circumstance, not due to negligence by SFRA, where a remedy selected in the CERCLA RODs or subsequent CERCLA decision document issued by the Navy has been properly implemented by SFRA in accordance with the RODs, approved remedial design documents, and the ETCA and is determined by EPA not to have achieved the ROD’s remedial action objectives. “Navy Remedy Failure” does not include volatile organic compound (VOC) vapor migration and accumulation caused by redevelopment activities.

1.4.5 Navy Retained Conditions

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The term “Navy Retained Conditions” means Unexploded Ordnance (as defined in ETCA Section 223); Military Munitions (ETCA Section 224); chemical, radiological, or biological warfare agents; and Radiological Materials (ETCA Section 214). The term Navy Retained Conditions does not include Ineligible Work as defined in Section 218 of the ETCA.

1.4.6 Regulatory Closure

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The term “Regulatory Closure” means Environmental Regulatory Agency approval, by issuance of a Certificate of Completion, of one or more Remedial Action Completion Reports (RACR) encompassing the entire ACES (or encompassing the portion of the ACES or particular condition

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with respect to which the term is used) pursuant to the procedures set forth in the AOC and, to the extent the Environmental Services includes activities not covered by the AOC, such as an Unknown Condition Discovered Outside the Course of Remediation involving a petroleum release, written Environmental Regulatory Agency approval that no further action is required for that condition.

1.4.7 Special Exclusions

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The term "Special Exclusions" means any of the following:

- 1) ~~Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the Parcels B and G CERCLA RODs, except to the extent attributable to any of the following:~~
 - a) ~~The negligence of the SFRA or any party acting on its behalf, including noncompliance with or failure to adequately execute its duties to monitor and assist the Regulatory Agencies in the enforcement of approved CERCLA institutional control land use restrictions in accordance with the AOC, Remedial Design Reports, and Remedial Action Work Plans;~~
 - b) ~~Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Navy Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in paragraphs 2 through 7 of this Section;~~
 - c) ~~Unknown conditions discovered during the course of remediation;~~
 - d) ~~Unknown conditions for chemicals listed in tables 3a and 3b discovered outside the course of remediation.~~
- 2) ~~Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.~~
- 3) ~~Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.~~

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- 4) ~~Any activity and associated cost identified as the responsibility of the Navy in the Amended Federal Facility Agreement (FFA). (Navy Note: Subject to further review and reconsideration as FFA amendment requirements are negotiated).~~
- 5) ~~The performance of CERCLA five year reviews for years 2013 and 2018 for remedies selected in the CERCLA RODs issued by the Navy.~~
- 6) ~~Any activity and associated cost related to an Unknown Condition for chemicals not listed in tables 3a and 3b, Discovered Outside the Course of Remediation, that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured to comply with the requirements of the Environmental Insurance Policies.~~
- 7) ~~(Place holder for any additional exclusions in the insurance policies mutually agreed by Navy and SFRA).~~

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1.4.8 Unknown Conditions Discovered During the Course of Remediation

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~~The term “Unknown Conditions Discovered During the Course of Remediation” means Environmental Conditions that are discovered in the course of implementing the TSRS, including “replacement” remedial covers (soil, asphalt, and/or concrete) that replace original remedial covers installed pursuant to the RODs and are not Known Conditions, Special Exclusions, or Navy Retained Conditions.~~

1.4.9 Unknown Conditions Discovered Outside the Course of Remediation

Commented [r13]: Modify and move to ETCA definitions.

~~The term “Unknown Conditions Discovered Outside the Course of Remediation” means Environmental Conditions other than Known Conditions and Unknown Conditions Discovered During the Course of Remediation. Tables 3a and 3b list the potential chemicals that may be present in media at Parcels B and G based on the history of past processes, operations, and activities at HPNS. Environmental Insurance coverage shall not exclude these Reasonably Expected Environmental Conditions during the term of liability coverage.~~

2.0. TECHNICAL SPECIFICATIONS AND SERVICES REQUIREMENTS

The major components of the remediation activities of the TSRS that comprise the Environmental Services are outlined below:-

1. Project management;
2. Remedial action work plan;
3. Remedy implementation;
4. Environmental insurance;
5. RACR and Regulatory Closure documentation;

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6. Public involvement: and.
7. Submittal of documents and achievement of project schedule.

SFRA shall provide the necessary qualified and licensed personnel, equipment, and resources to successfully execute the Environmental Services. ~~†The remediation activities described in the remedial activities table (Table 1) shall be provide the basis of the Statement of Work under the AOC in accordance with the ETCA and AOC.~~ Project activities and responsibilities are outlined in the following sections and additional details on project activities listed below are included in Section 3.0 of this TSRS. ~~This TSRS~~ The following Sections more fully specify the scope of the remediation activities that comprise the Environmental Services that SFRA will conduct under the ETCA on behalf of the Navy.

2.1. Project Management

The complexity, magnitude, and unique nature of the cleanup at the ACES requires management and coordination of project activities to ensure that: (1) stakeholders are kept informed of the project status; (2) existing or potential problems are addressed; and (3) any changes that may be required to prudently manage the project are addressed. Project stakeholders include the Department of the Navy Base Realignment and Closure (BRAC) Program Management Office (PMO), the Environmental Regulatory Agencies, and SFRA, and Lennar Urban. ~~SFRA will use this TSRS to guide the cleanup of the ACES in conjunction with redevelopment while ensuring consistency with the AOC, CERCLA, the NCP, and other applicable environmental laws and regulations.~~ To ensure that the requirements of the AOC, CERCLA, and the NCP are being met, the Navy ~~shall may~~ consult with SFRA, including review and comment, ~~and concurrence~~ on documents: as set forth in Table 4 ~~presents documents which the Navy will receive for (1) information only, (2) review and comment, or (3) review and concurrence.~~

SFRA shall maintain a project repository, as well as provide copies to the Navy for the Navy's maintenance of the Administrative Record files as required by CERCLA, the NCP, and other applicable laws and regulations. SFRA shall be required to include the draft and final RAWP documents and related review comments, responses to comments, technical support documents, etc in a project repository as per Section 3.2 of this TSRS and also provide copies to the Navy for inclusion by the Navy in the Navy's CERCLA restoration post-decision record file. SFRA shall also be required to provide copies of documents to the Navy that it develops and that the Navy relies upon for ROD amendments or ESDs (see Section 300.825(a)(1) of the NCP) and 5-Year Reveiws Reviews for the years 2013 and 2018. Documents provided to the Navy for inclusion in the Navy's CERCLA restoration post-decision record file shall meet the requirements listed in Attachment 1.

SFRA shall also prepare and submit periodic progress reports (as defined in Section 3.1) to the Navy that document technical progress to date, depict upcoming work, and describe any technical issues confronted with successful or proposed solutions. Finally, SFRA shall hold conference calls, as defined in Section 3.3, with the Navy representative on an as-needed basis as

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reasonably determined by the Navy to discuss the progress of the cleanup of the ACES and the status of ongoing documents and reports being reviewed by the Navy representative. The Navy representative shall be the BRAC Environmental Coordinator, or designated successor. Additional details on project management responsibilities are included in Sections 3.1 through 3.3 of this TSRS.

2.2. Remedial Action Work Plans

SFRA shall prepare the RAWPs as required under the AOC to provide for the construction of the remedy as set forth in design plans and specifications in the approved final remedial design documents ("Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" [ChaduxTt, date TBD], and "Final Remedial Design Package Parcel G" [ChaduxTt, date TBD]). SFRA shall submit draft and draft final RAWPs to the Navy and Environmental Regulatory Agencies for review, comment, and concurrence and to the Navy for review and comment. The RAWPs may also include any revisions to the approved final remedial designs to address modifications desired by SFRA to support redevelopment. Any revisions to the remedial designs must still meet the requirements of the CERCLA RODs and the AOC. The RAWPs shall describe: (1) preconstruction activities, including permitting, (2) construction activities, and (3) post construction activities, including preparation of a new or revised O&M plan to reflect the remedy as actually constructed as well as to account for changes in standards or improved materials. The RAWPs shall include compliance monitoring plans as required to satisfy requirements of the AOC, associated with construction including, but not limited to dust control plan, stormwater pollution prevention plan, construction quality control plan, sampling and analysis plans, and health and safety plan. The RAWPs shall also include a schedule for implementation of all remedial action tasks. **The AOC will dictate what is required of the RAWP**

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2.3. Remedy Implementation

SFRA shall use funds provided under the ETCA to conduct the remedy implementation tasks outlined in the RODs and addressed in this Section, here. SFRA shall ensure that all remedial actions are performed in accordance with the terms of the ROD, RD, RAWP, AOC, CERCLA, the NCP above documents and in support of the reuse specified in the reuse plan prepared by SFRA (the "1997 Reuse Plan"). SFRA is responsible for all additional costs associated with any change in remedy implementation required to support any change in re-land use from the 1997 Reuse Plan. All changes in land use from the 1997 Reuse Plan that increase the amount or scope of remedial activities on the ACES, or compromise the effectiveness of the Covenants to Restrict Use of Property (CRUP) or land use controls found in the LUC RDs, or require the modification, variance, or termination of such restrictions, shall be at the sole expense and responsibility of SFRA. **The ETCA addresses changes to the reuse plan** If such a change is planned If SFRA plans to amend the 1997 Reuse Plan, SFRA it shall notify the Navy representative before proceeding with any of its associated obligations under the ETCA with respect to such

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amendment. Regardless of any changes in reuse, SFRA must ensure that all remedial activities contemplated for the ACES meet the requirements of CERCLA and the NCP, and for petroleum-related corrective actions, all applicable federal or state laws.

SFRA shall be responsible for developing documents associated with the remedial actions to achieve Regulatory Closure.

The Navy has followed the CERCLA process in the prior characterization of environmental conditions, analysis of remedial action alternatives, and selection of the remedy. Site characterization data are available in various reports referenced in Appendix A herein and in the Administrative Record files. The site characterization data have been used to select the remediation components and the site-specific activities summarized in the remedial activities required by the CERCLA RODs and that are summarized in ¶Table 1-(Table 1). The remedial actions, including institutional controls, for the ACES will comply with the AOC, CERCLA, the NCP, and other applicable state and federal laws and regulations and shall be protective of human health and the environment. The CERCLA RODs and the AOC set forth the specific ~~The following sections describe the individual components of the remedy to be implemented at the ACES. Those remedial components are summarized below:~~

Regulatory Closure for covers and shoreline revetment must be achieved no later than 6 years after the date of execution of the ETCA.

2.3.1. Soil Vapor Extraction (SVE) System Expansion and Operation

SFRA shall expand and operate the SVE system inside Building 123 as described in the “Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD) as required under the AOC. SFRA shall operate the system in pulsed and focused extraction modes as necessary to reduce soil gas concentrations to below soil gas action levels for residential reuse or until asymptotic conditions are reached without reasonable indication of further reduction based on system monitoring results. SFRA shall adjust maintain the area requiring institutional controls (ARIC) to address potential accumulation of VOC vapors in enclosed structures based on soil gas sample results if operation of the SVE system does not reduce soil gas concentrations to below soil gas action levels for residential reuse. SFRA shall design and implement engineering controls as needed to prevent exposure to VOCs in soil gas that may accumulate within Building 123 or any future enclosed structures that may be built on the adjusted ARIC for VOC vapors. SFRA shall decommission the SVE system after approval from the Environmental Regulatory Agencies. Details on operation of the SVE system including monitoring, reporting, and O&M activities are contained in the “Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD).

Performance standards: The SVE system shall be operated until the remedial action objectives specified in the AOC, Remedial Design Package, and RAWP have been met. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the

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AOC (See Section 2.5), action levels for soil gas based on residential reuse as presented in “Final Memorandum, Approach for Developing Soil Gas Action Levels for Vapor Intrusion Exposure at Hunters Point Shipyard” (ChaduxTt, April 30, 2010) or revised values that may be developed based on the procedures detailed in the memorandum and subsequently approved by the Environmental Regulatory Agencies.

2.3.2. Groundwater Remediation

SFRA shall inject polylactate at the IR Site 10 VOC plume in accordance with the AOC for further source control and to enhance natural attenuation. Injection and monitoring of the natural attenuation will be conducted in accordance with requirements and procedures specified in the Remedial Design Package and the RAWP. SFRA shall track the progress of natural attenuation processes by monitoring groundwater. SFRA shall continue monitoring until concentrations of chemicals in groundwater are below groundwater remediation goals or until groundwater concentrations are shown to not pose a risk to human health via vapor intrusion. Soil gas monitoring above the plume will be used to demonstrate soil gas concentrations are below soil gas action levels for residential reuse to allow reduction in the frequency or cessation of groundwater monitoring at the IR 10 VOC plume area. Approval from the Environmental Regulatory Agencies will be required in advance for changes in the frequency or extent of groundwater monitoring. Details on the extent of the IR Site 10 VOC plume as well as information on monitoring and reporting are included in the “Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD). Also refer to Section 2.3.6 of this TSRS for more information on long term groundwater monitoring.

Performance standards: (1) SFRA shall conduct groundwater remediation until the remedial action goals for groundwater as presented in the approved CERCLA RODs and the RAMPs contained in “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD). The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). or (2) action levels for soil gas based on residential reuse as presented in “Final Memorandum, Approach for Developing Soil Gas Action Levels for Vapor Intrusion Exposure at Hunters Point Shipyard” (ChaduxTt, April 30, 2010) or revised values that may be developed based on the procedures detailed in the memorandum and subsequently approved by the Environmental Regulatory Agencies.

2.3.3. Covers over Soil

SFRA shall construct a durable cover over the ACES. Soil shall be covered with a material that will not break, erode, or deteriorate such that the underlying soil becomes exposed. Examples of acceptable covers include a minimum 6 inches of asphalt or a minimum of 2 feet of clean imported soil as presented in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18”, (ChaduxTt, date TBD) and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD). Other standard construction practices for roads, sidewalks, and buildings that meet the

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~~requirements of the San Francisco Department of Public Works or the San Francisco Department of Building Inspection codes [citations to be provided by City/SFRA] will be adequate as covers. Any other cover designs must be reviewed and approved by the Environmental Regulatory Agencies and the Navy before they are implemented at the ACES. Soil imported for covers must be tested to (1) confirm it does not contain contaminants at concentrations exceeding remediation goals, and (2) confirm it contains less than 0.25 percent asbestos, and (3) confirm it is consistent with DTSC imported soil guidance "Information Advisory Clean Imported Fill Material" (DTSC 2001) to comply with the Soil Importation Plan, which will be developed as a component of the RAWPs.~~

~~**Performance objectives:** Durable cover that (1) meets the specifications of the "Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, date TBD), and "Final Remedial Design Package Parcel G" (ChaduxTt, date TBD), or (2) meets the requirements of San Francisco Department of Public Works or the San Francisco Department of Building Inspection codes, or (3) fulfills the requirements of the AOC or is otherwise approved by the meets the approval of the Environmental Regulatory Agencies and the Navy.~~

~~The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). Regulatory Closure for covers must be achieved no later than 7 years after the date of execution of the ETCA.~~

2.3.4.4—Shoreline Revetment

SFRA shall construct a shoreline revetment for certain portions of the shoreline at Parcel B to prevent erosion and migration of underlying soil and sediment into San Francisco Bay. An example of an acceptable revetment design is presented in the "Final Remedial Design Package for Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, date TBD). ~~Any other revetment designs must be reviewed and approved by the Environmental Regulatory Agencies and the Navy before they are implemented at the ACES. The revetment design objectives include:~~

- ~~1. Withstand the impact of anticipated maximum wave energy~~
- ~~2. Account for water levels from tidal fluctuations and potential sea level rise~~
- ~~3. Encapsulate all potentially contaminated sediment, extending to the parcel boundary, to prevent contact by human or ecological receptors~~
- ~~4. Minimize any loss of bay area or volume and any impact on tidal flats~~
- ~~5. Account for future use of the shoreline area, including the potential for damage (vandalism and from foot traffic) as well as to allow public access to the shoreline~~

~~**Performance objectives:** The Ss shoreline revetment shall: that (1) meets the specifications of the "Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, date TBD), or (2) meets otherwise be the approved dat by of the Environmental Regulatory Agencies and the Navy.~~

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The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5). Regulatory Closure for shoreline revetment must be achieved no later than 7 years after the date of execution of the ETCA.

2.3.5. ~~Control of Soil Gas~~ Vapor Intrusion Mitigation

SFRA shall design and implement engineering controls ~~as needed~~ in accordance with the AOC to prevent exposure to VOCs in soil gas that may accumulate within existing or future enclosed structures at concentrations that would pose unacceptable risk via ~~indoor~~ inhalation of indoor vapors, based on the planned reuse. The Navy ~~will~~ has ~~established~~ an initial ARIC for VOC vapors based on soil gas surveys conducted prior to redevelopment. The initial ARIC will be established is documented in the technical memorandum summarizing the results of the soil gas surveys to be prepared by the Navy following completion of the surveys and submitted to the Environmental Regulatory Agencies for review, comment, and approval (Reference TBD). Examples of acceptable engineering controls are presented in the "Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18", (ChaduxTt, date TBD) and "Final Remedial Design Package Parcel G" (ChaduxTt, date TBD) and the RAWPs. ~~Objectives for control of soil gas can be grouped into the following broad categories:~~

Structures: ~~For all structures to be constructed within the ARIC for VOC vapors, SFRA shall design and install vapor mitigation systems to prevent unacceptable exposure of enclosed building occupants to soil gas. Vapor mitigation systems shall be installed and maintained by SFRA consistent with DTSC guidance ("Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final" dated December 15, 2004, and revised on February 7, 2005). SFRA shall develop remedial designs for vapor mitigation systems and include them in RAWPs to be reviewed and approved by the Environmental Regulatory Agencies and the Navy before the systems are installed.~~

Prevention of migration pathways: ~~For all subsurface utilities to be constructed across the boundary of the ARIC for VOC vapors, SFRA shall design and install vapor mitigation systems to prevent preferential migration of soil gas along subsurface utility trenches. The vapor mitigation system shall be installed and maintained consistent with DTSC guidance ("Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final" dated December 15, 2004, and revised on February 7, 2005) and shall provide a mechanism to vent accumulated soil gas to the surface to prevent subsurface migration. SFRA shall develop remedial designs for vapor mitigation systems and include them in RAWPs to be reviewed and approved by the Environmental Regulatory Agencies and the Navy before the systems are installed.~~

~~The initial ARIC for VOC vapors may be modified, with approval of the Environmental Regulatory Agencies and the Navy, as soil and groundwater contamination areas that are producing unacceptable vapor inhalation risks are reduced over time or in response to further~~

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soil, vapor, and groundwater sampling and analysis for VOCs that establishes that areas originally included in the initial ARIC for VOC vapors do not pose an unacceptable potential exposure risk due to VOC vapors. SFRA may petition the Environmental Regulatory Agencies and the Navy in accordance with the AOC to revise the extent of the ARIC for VOC vapors as conditions change on the ACES over time.

Performance standards: (1) action levels for soil gas based on residential reuse as presented in “Final Memorandum, Approach for Developing Soil Gas Action Levels for Vapor Intrusion Exposure at Hunters Point Shipyard” (ChaduxTt, April 30, 2010) or revised values that may be developed based on the procedures detailed in the memorandum and subsequently approved by the Environmental Regulatory Agencies, and (2) Vapor mitigation shall meet the remedial action objectives stated in the AOC, “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), and the requirements for vapor mitigation in “Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final” dated December 15, 2004, and revised on February 7, 2005. The SFRA shall submit a RACR and obtain regulatory closure for this action in accordance with the AOC (See Section 2.5).

2.3.6. Long-term Groundwater Monitoring

SFRA shall monitor elevations of and chemical concentrations in groundwater according to the requirements in the RAMPs that are included in “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD). SFRA shall coordinate with the Environmental Regulatory Agencies in accordance with the AOC regarding changes to groundwater monitoring and shall submit summary reports in accordance with the RAMPs. The general objectives for monitoring groundwater include: (1) monitor the potential migration of contaminants into previously uncontaminated areas and potential migration toward San Francisco Bay, and (2) monitor changes in concentrations within a plume or near individual wells.

Performance standards: Groundwater monitoring shall meet the remedial action objectives stated in the AOC, (1) remediation goals and trigger levels for groundwater as presented in the approved CERCLA RODs and the RAMPs contained in “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), or (2) action levels for soil gas based on residential reuse as presented in “Final Memorandum, Approach for Developing Soil Gas Action Levels for Vapor Intrusion Exposure at Hunters Point Shipyard” (ChaduxTt, April 30, 2010) or revised values that may be developed based on the procedures detailed in the memorandum and subsequently approved by the Environmental Regulatory Agencies. Long term groundwater monitoring shall continue until such time as that the regulatory agencies have issued regulatory closure for groundwater conditions (See Section 2.5).

2.3.7. Five-year Reviews

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SFRA shall prepare five-year review reports beginning with year 2023 and submit them to EPA ~~and the Navy~~ for review, comment, and concurrence and to the Navy for review and comment. Reports shall be similar to previous five-year review reports for HPNS and consistent with EPA guidance. The Navy will prepare the five-year review reports for 2013 and 2018 and submit them to EPA for review and comment.

2.3.8. Implementation of Institutional Controls and other Long-Term Obligations

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SFRA shall ~~monitor implement~~ the institutional control requirements of the LUC RDs that are included in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), and CRUP(s) and Deed(s) that are signed and recorded at the time of transfer of title. ~~Implementation includes completion of annual inspections and reports.~~ SFRA shall ensure controls remain in place and shall monitor implementation of corrective actions for violations. Details are contained in the LUC RD documents that are included in “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD).

SFRA shall ~~implement monitor compliance with~~ the requirements of the O&M plans that are included in the “Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18” (ChaduxTt, date TBD), and “Final Remedial Design Package Parcel G” (ChaduxTt, date TBD), as well as revisions to the O&M plans that may be made and approved by the Environmental Regulatory Agencies pursuant to the AOC to reflect the remedy as actually constructed. ~~Implementation includes regularly scheduled inspections and reports and required maintenance to ensure the remedy continues be effective and protect human health and the environment.~~

2.4. Environmental Insurance (Reserved-. (NOTE: procuring the insurance policies is not part of the scope of work; it is requirement of the ETCA and the ETCA can speak for itself – it provides for Navy approval of the policies.)

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SFRA shall obtain the Environmental Insurance Policies (“EI”) as set forth in the ETCA and in a form substantially similar to the policies attached to this TSRS at Exhibit ~~_____~~. Intent would be to attach the bindable policies to prevent delays in the cleanup and to protect the Navy and SFRA from cost overruns and regulatory re-openers. The term “regulatory re-openers” means any legal requirements for additional remediation that arise after Regulatory Closure has been achieved. ~~By way of example and not limitation, whether a circumstance is a regulatory re-opener is illustrated as follows: (1) additional vapor mitigation necessary because regrading or excavating in soil creates new pathways for soil gas migration and potential exposure in areas that were previously dropped from the ARIC for VOC vapors would be a regulatory re-opener, but (2) enactment and promulgation of new laws, regulations, or standards requiring more stringent cleanups would not be considered a regulatory re-opener. Prior to the conveyance of any portion of the ACES to SFRA, SFRA shall procure the Environmental Insurance Policies~~

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attached as Appendix 4 to the ETCA providing “cost cap” or “stop loss” coverage, or equivalent, for cost overruns associated with implementing the Environmental Services and further providing additional pollution legal liability or similar coverage, to the extent available, for addressing unknown contaminants and for third party liability claims.

The SFRA or its Contractor shall procure and the Navy will fund Environmental Insurance with minimum specifications as follows:

1. Remediation Stop Loss (“RSL”) Insurance Policy (also known as “Cleanup Cost Cap or CCC”) and thereafter carry and maintain the EI coverage in full force and effect over the duration of the TSRS. The EI (RSL/CCC) policy shall meet or exceed the following provisions:

- a. Provides coverage applicable to the ACES, Regulatory Closure performance objectives, and performance standards identified in the TSRS, and confirms that all the obligations assumed under the ETCA are incorporated into the definition of the insured “remedial plan” as specified in the insurance endorsements.
- b. Provides coverage, at a minimum, for seven (7) years.
- c. Provides coverage, at a minimum, equal to twice the negotiated price of the insured work outlined in the TSRS.
- d. Coverage to include a Waiver of Subrogation, as applicable, for claims associated with matters and scope items addressed in the TSRS that the SFRA or its Contractor or insurance company may have against the Navy, its officers, agents or employees.
- e. Coverage provided from a carrier rated A.M. Best’s A (Excellent) and Financial Size Category (FSC) IX or better.
- f. Requires that technical and schedule progress reports to be provided to the Navy on the same schedule that they are provided to the insurance carrier.
- g. Contains no “War Exclusion” or contains a limited war exclusion that excludes cleanup costs caused solely by a hostile or violent act of war after the inception date.
- h. Provides the Navy the primary right to assign the policy to a replacement contractor acceptable to the insurance company should the SFRA and/or its Contractor default or otherwise be unable to meet the Regulatory Closure requirements.
- i. Names the Navy as an Additional Insured.
- j. Consider requesting first party business interruption coverage.

2. Environmental Impairment Liability/Pollution Legal Liability (“EIL/PLL”) Policy which shall meet or exceed the following provisions:

- a. Provides EIL/PLL with coverage for on and off site, third party Bodily Injury, Property Damage, Cleanup Costs, Costs associated with Regulatory “Re-openers,” and Defense Costs for the environmental liability incurred at the site under the indemnity provisions of the contract by the contractor, including but not limited to coverage for potential tort liability relating to VOC soil vapors. This policy shall have a limit of liability of \$20,000,000 which cannot be combined with the Professional Liability policy. If this

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coverage element is provided as part of the RSL/CCC policy, the \$20,000,000 limit for this coverage section shall be additive to the required limits on the RSL/CCC policy. This EIL/PLL coverage may exclude cleanup obligations otherwise insured in the stop loss/cost cap policies and may also exclude contaminants outside the scope of services outside of the Environmental Insurance Policies.

- b. Policy shall have, at a minimum, a term of ten (10) years and preferably twenty (20) years if available and not cost prohibitive.
- e. Provides a Waiver of Subrogation for claims associated with matters and scope items addressed in the TSRS that the Contractor or insurance company may have against the Navy.
- d. Names the Navy as an Additional Insured.
- e. Is Assignable to a replacement contractor mutually agreeable to the EI provider.
- f. _____

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2.5. Remedial Action Completion Report (RACR) and Regulatory Closure Documentation

SFRA shall submit RACRs or certificates of completion for the ACES in accordance with requirements of the AOC. As set forth Section 208 of the ETCA, a RACR or certificate of completion may encompass the entire ACES or a portion of the ACES or a particular condition that may be subject to Regulatory Closure, and to the extent the Environmental Services include activities not covered by the AOC, written Environmental Regulatory Agency approval that no further action is required for that condition. SFRA may select whether a single RACR or multiple RACRs are appropriate for each remedial component at the ACES. Regulatory Closure will be documented by receipt of a Certificate of Completion from the Environmental Regulatory Agencies upon approval of the RACR as provided in the AOC. Each RACR will provide all information required by the Environmental Regulatory Agencies pursuant to the AOC and Receipt of the Certificate of Completion will document the Environmental Regulatory Agencies' written confirmation of concurrence as to the completion of Regulatory Closure.

2.6. Public Involvement

The opportunity requirement for Public involvement is required to essential for part of the process of obtaining community input and maintaining community understanding and support for the cleanup actions on the ACES. SFRA shall be responsible for notification to, involvement with, and solicitation of input from the public as required by the AOC, CERCLA, and the NCP, in coordination with the Environmental Regulatory Agencies and the Navy. Additionally, The Navy will continue to be involved with other property on HPNS not affected by this early transfer and will require coordination of public involvement activities. SFRA will provide to the Navy, in timely fashion, pertinent information regarding its public involvement activities associated with the cleanup actions at the ACES, in order for the Navy to meet its site-wide community relations requirements under the Community Involvement Plan, CERCLA, and the

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NCP. ~~SFRA will be responsible for, in close coordination with the Navy, initiating, coordinating, and scheduling necessary public activities relating to the remedial activities on the ACES as required under the TSRS and AOC, including but not limited to, developing briefings, presentations, fact sheets, and legal notices; taking meeting minutes; preparing for and hosting public meetings; and sending articles to news media after coordination with the Environmental Regulatory Agencies, if necessary. SFRA shall also comply with other requirements for public participation as prescribed under the AOC.~~

~~SFRA shall prepare at least 2 fact sheets and hold at least 4 public meetings each year during the first 5 years after execution of the ETCA. SFRA shall prepare fact sheets and hold public meetings as necessary to inform the community during future years. SFRA shall provide the Navy with two paper copies and one electronic copy of all documents that are submitted to the Environmental Regulatory Agencies and other parties for inclusion by the Navy in the Navy's CERCLA restoration post-decision record file. Documents provided to the Navy for inclusion in the Navy's CERCLA restoration post-decision record file-s shall meet the requirements listed in Attachment 1.~~

2.7. ~~Submittal of Documents and Achievement of Project Schedule~~

~~SFRA shall be responsible for completing the following major tasks prior to the ETCA termination:~~

- ~~○ Complete all required remedial activities in the ACES, as required by the ETCA and AOC;~~
- ~~○ Forward all reports and other documentation as required under the ETCA and AOC for review, and concurrence where specified (see Table 4), by the Navy representative;~~
- ~~○ Upon completion of remedial actions for the ACES pursuant to the ETCA and AOC, forward all reports and make any other documentation requested by the Navy available for review by the Navy representative; and~~
- ~~○ Following completion of all environmental services, excluding Long Term Obligations, pursuant to the ETCA and AOC, submit proof of Regulatory Closure by obtaining Environmental Regulatory Agency Certification of Completion of the remedial action for such portion(s) of the ACES and delivering them to the Navy.~~

~~SFRA shall submit all deliverables as outlined in the TSRS and documents required under the AOC to be approved by the Environmental Regulatory Agencies to the Navy for review and comment, and concurrence as set forth in where specified (see Table 4). SFRA shall be required to include the draft and final RAWP documents and related review comments, responses to comments, technical support documents, etc in a project repository as per Section 3.2 of this TSRS and also provide copies to the Navy for inclusion by the Navy in the Navy's CERCLA restoration post decision record file. Documents provided to the Navy for inclusion in the Navy's CERCLA restoration post decision record file shall meet the requirements listed in Attachment 1. SFRA shall also be required to provide copies of documents to the Navy that it~~

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develops and that the Navy relies upon for ROD amendments or ESDs (see Section 300.825(a)(1) of the NCP). *NOTE: We should insert a provision in the ETCA providing that SFRA shall not propose an ESD or ROD amendment, or amendment to the AOC or CRUP without the concurrence of the Navy, which shall not be unreasonably withheld. Those really are not part of the scope of the Environmental Services – they are changes to that scope --, so they do not belong in the TSRS.*

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SFRA shall provide the Navy representative with two paper copies and one electronic copy of all documents and reports required under the ETCA to be provided to the Navy, including electronic copies of all geographic information system (GIS) data. The Navy shall have the right to review and provide comments on the documents and reports described above. The Navy representative will be responsible for reviewing documents and reports submitted to the Navy in a timely manner to support the project schedule, concurrent with regulatory review and schedules. The Navy representative reserves the right to obtain professional assistance, at its own cost, to review documents and reports that SFRA submits to the Navy.

If the Navy has comments or concerns, the Navy will notify SFRA within a reasonable time period, and discuss the concerns and comments with SFRA, and attempt to find a mutually agreeable resolution. If a mutually agreeable solution is not reached within 15 working days of the commencement of discussions between SFRA and the Navy, the parties reserve the right to recommend that the dispute resolution process, as described in Section 1001 of the ETCA, be initiated.

SFRA shall provide documents to the Navy in a time and manner that will afford the Navy sufficient time for review and comment before the documents are submitted to the appropriate Environmental Regulatory Agency. The appropriate "sufficient time" shall be assessed on a case-by-case basis in consideration of the nature and volume of the documents provided for Navy review. To the extent Navy approval is required before submission to the appropriate Environmental Regulatory Agency, the Navy shall provide such approval (or disapproval, as the case may be) no later than 10 business days before such document is due to be submitted to the Regulatory Agency, and in which case the Navy will afford sufficient time for review prior to such 10 day advance deadline. The Navy representative will take no more than 30 working calendar days to review and comment on documents received pursuant to the ETCA. In those instances where large or numerous documents are provided to the Navy at the same time, the Navy and SFRA shall agree upon a reasonable period in which the Navy will review and provide comments back to SFRA. The Navy's review of the documents and reports will be limited to the following scope:

- To ensure consistency with the ETCA and CRUPs
- To ensure consistency with CERCLA, the NCP, and any requirements applicable to non-CERCLA environmental issues
- To ensure that ETCA funds that have been or will be spent are in compliance with the scope as defined in Section 101 of the ETCA services regulations(?)

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~~o To ensure that ETCA funds that have been or will be spent are in compliance with the scope as defined in Section 101 of the ETCA, and the environmental services as defined in Section 1.4.2 of the TSRS.~~

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In addition, if the Navy representative deems it necessary, the Navy representative may access the ACES for purposes of on-site quality assurance and verification of remediation performance in accordance with the ETCA and deed covenant.

3.0. —ADDITIONAL INFORMATION

3.1. —Project Progress Reports

SFRA shall submit project performance and financial reports to the Navy in accordance with Sections 301(f)(2) and (3) of the ETCA. Reports shall be in a format and contain information that is acceptable to the Navy and that is required for to enable the Navy to verify SFRA's compliance with the ETCA. Progress reports required to be submitted to the Environmental Insurer and EPA under the AOC²²² shall be deemed adequate for purposes of progress reports required to be provided to the Navy under this Section 3.1. ~~address the following topics, as applicable: technical progress and work completed, total grant funds spent during the report period and total spent to date, projected work for the next period and estimated grant funds needed for the upcoming work, technical or regulatory issues that may impact project schedule, status of comments on reports, corrective measures taken, needed notifications in accordance with the ETCA, changes to the AOC, summary of public participation activities during the period and planned for the next period, etc.~~

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3.2. —Project Repository

SFRA shall maintain a project repository for the ACES environmental services at an easily accessible location that is open to the public near HPNS for project-related environmental remediation information generated after property transfer to SFRA.

3.3. —Conference Calls and Briefings

SFRA shall brief the Navy representative on an as-needed basis but in no instance more often than monthly on the status of the remediation activities at the ACES or other concerns regarding progress reports or other reports developed during the performance of the environmental services. Briefings will be conducted by means of conference calls that SFRA shall arrange as reasonably requested by the Navy.

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Tables

- 1 Remedial Activities Required by the CERCLA RODs
- 2 Allocation of Responsibility Matrix **This matrix is ok for discussion purposes and in developing the ETCA but should not be included in the final document – the ETCA speaks for itself**
- ~~3a Reasonably Expected Environmental Conditions for Parcel B~~
- ~~3b Reasonably Expected Environmental Conditions for Parcel G~~
- ~~43 Document Matrix Identifying Navy Review Roles~~

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Appendix

- A Applicable and Relevant Environmental Documents

Attachment

- ~~1~~ ~~4~~ Environmental Work Instruction EVR.4, Implementing and Maintaining the CERCLA Administrative Record and Compendium at NAVFAC Southwest
- ~~+2~~ Environmental Insurance Policies

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TABLE 1
REMEDIAL ACTIVITIES REQUIRED BY THE CERCLA RODS

Parcel	Approximate Area	Remedial Action	Description
B	15,000 square feet	Soil Vapor Extraction	Operate SVE system at Building 123
B	7,500 square feet	Groundwater Treatment	Inject polylactate at IR Site 10 VOC plume
B and G	80 acres	Covers	Install covers over all areas; various cover types (soil, asphalt, buildings, etc)
B	1,500 linear feet	Shoreline Revetment	Construct revetment
B and G	80 acres ¹	Control of Soil Gas	Install and maintain vapor mitigation systems
B and G	Parcel-wide	Long-Term Obligations	Monitor groundwater in accordance with the RAMPs
			Conduct O&M activities in accordance with the O&M plans
			Implement and enforce ICs in accordance with the LUC RDs
			Prepare and submit 5-year review reports

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Notes:

1 Area requiring institutional controls for mitigation of VOC vapors will be refined based on the results of soil gas surveys.

IC Institutional control
IR Installation Restoration
LUC RD Land use control remedial design
O&M Operation and maintenance
RAMP Remedial action monitoring plan
SVE Soil vapor extraction
VOC Volatile organic compound

Refer to the "Final Remedial Design Package Parcel B, Excluding IR Sites 7 and 18" (ChaduxTt, date TBD), and "Final Remedial Design Package Parcel G" (ChaduxTt, date TBD) for the specific locations of these areas and for the RAMPs, LUC RDs, and O&M plans.

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TABLE 2
ALLOCATION OF RESPONSIBILITY MATRIX **[See note above – this should not ultimately be part of the TSRS]**

Table 2, Allocation of Responsibility Matrix				
Item of Responsibility	SFRA Responsibility	Navy Responsibility	Not Resolved	Comments on Defined Terms
I. Known Conditions				
a. As defined in Section 1.4.3	X	No comeback		“Environmental Services” includes “Known Conditions” even if policy is expired or exhausted. “Known conditions” are defined in Tables 3a and 3b of TSRS.
b. Excluded from insurance				
i. CWM, biological, MEC, radiological		X		“Environmental Services” excludes “Navy Retained Conditions.”
ii. ACM, LBP (as defined as Ineligible Work)	X (at own cost)			Included in definition of “Ineligible Work,” which is excluded from “Environmental Services.” Operative language will clarify Grantee performs Ineligible Work at own cost.
iii. Other exclusions			X	“Special Exclusions” are excluded from “Environmental Services.” “Special Exclusions” has a placeholder for mutually agreeable insurance exclusions.
II. Unknown Conditions				
a. Discovered During Course of Remediation.				

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Table 2, Allocation of Responsibility Matrix				
Item of Responsibility	SFRA Responsibility	Navy Responsibility	Not Resolved	Comments on Defined Terms
i. Insured.	X	No comeback		"Environmental Services" includes "Unknown Conditions Discovered in the Course of Remediation."
ii. Insured, but exceeds limits/term	X			...even if policy is expired or exhausted.
iii. Excluded			X	"Special Exclusions" are excluded from "Environmental Services." "Special Exclusions" has a placeholder for mutually agreeable insurance exclusions.
b. Discovered Outside Course of Remediation (assuming not Ineligible Work)				
i. Insured.	X			"Environmental Services" includes "Unknown Conditions Discovered Outside the Course of Remediation" to the extent funded by Environmental Insurance Policies.
ii. Insured, but exceeds limits/term.	<u>Tables 3a and 3b</u>	<u>Chemicals other than Tables 3a and 3b</u>		"Special Exclusions" are excluded from "Environmental Services."
iii. Excluded			X	"Special Exclusions" are excluded from "Environmental Services." "Special Exclusions" has a placeholder for mutually agreeable insurance exclusions.
c. Uninsured				
i. CWM, biological,		X		Included in definition of "Navy Retained

Table 2, Allocation of Responsibility Matrix				
Item of Responsibility	SFRA Responsibility	Navy Responsibility	Not Resolved	Comments on Defined Terms
MEC, radiological				Conditions,” which are excluded from “Environmental Services.”
ii. ACM, LBP (as defined as Ineligible Work)	X			Included in definition of “Ineligible Work,” which is excluded from “Environmental Services.” Operative language will clarify Grantee performs Ineligible Work at own cost.
iii. Other exclusions			X	“Special Exclusions” are excluded from “Environmental Services.” “Special Exclusions” has a placeholder for mutually agreeable insurance exclusions.
III. Navy Retained Conditions				
a. CWM, biological, MEC		X		Included in “Navy Retained Conditions,” which are excluded from “Environmental Services.”
b. Government radiological		X		Encompassed within definition of “Radiological Materials” which are included in “Navy Retained Conditions,” which in turn are excluded from “Environmental Services.”
c. Other radiological				
i. Treated as radiological and special handling		X		Encompassed within definition of “Radiological Materials,” which are included in “Navy Retained Conditions,” which in turn are excluded from “Environmental Services.”
ii. No special handling	X			Non-military products whose radionuclides don’t require special handling are excluded from “Radiological Materials,” which means they are

Table 2, Allocation of Responsibility Matrix				
Item of Responsibility	SFRA Responsibility	Navy Responsibility	Not Resolved	Comments on Defined Terms
				not a "Navy Retained Condition."
IV. ROD amendments and ESDs				
a. Grantee negligence of CERCLA RODs, both Knowns and Unknowns	X			"Environmental Services" excludes "Special Exclusions." "Special Exclusions" includes activities associated with ROD amendments and ESDs, unless resulting from Grantee's negligence.
b. Navy Remedy Failure for Knowns, no Grantee negligence		X		"Environmental Services" excludes "Special Exclusions." "Special Exclusions" includes activities associated with ROD amendments and ESDs resulting from "Navy Remedy Failure."
c. Unknown	Found during course of remediation or outside the course of remediation for chemicals in Tables 3a and 3b.	If not funded by insurance for chemicals not listed in Tables 3a and 3b.		"Environmental Services" excludes "Special Exclusions." "
d. Grantee Request	X			"Environmental Services" excludes "Special Exclusions" and "Navy Retained Conditions." "Special Exclusions" includes activities associated with ROD amendments and ESDs, unless resulting from a Grantee request not associated with "Navy Remedy Failure."
V. Regulatory	X			Paying "Regulatory Oversight Costs" is necessary

Table 2, Allocation of Responsibility Matrix				
Item of Responsibility	SFRA Responsibility	Navy Responsibility	Not Resolved	Comments on Defined Terms
Oversight Costs				to achieve "Regulatory Closure," and is therefore included in "Environmental Services." They are not excluded as "Ineligible Work" because "Regulatory Oversight Activities" are excluded from the definition of "Regulatory Enforcement Activities," which is included in "Ineligible Work."
VI. Long-Term Obligations	X			"Long-Term Obligations" are included within "Environmental Services."

ACM Asbestos-containing material
 CWM Chemical warfare materiel
 ESD Explanation of significant differences
 LBP Lead-based paint
 MEC Munitions and explosives of concern
 RACR Remedial action completion report
 ROD Record of decision
 SFRA San Francisco Redevelopment Agency
 TSRS Technical specifications and requirements statement

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TABLE 3a

REASONABLY EXPECTED ENVIRONMENTAL CONDITIONS FOR PARCEL B

The following table lists chemicals that are reasonably expected to be present in media at Parcel B based on the history of past processes, operations, and activities at Parcel B and HPNS in general. Some of the key documents describing past activities are listed below; refer to the HPNS Administrative Record files for additional information that may be applicable or relevant.

ChaduxTt. 2007. "Final Parcel B Technical Memorandum in Support of a Record of Decision Amendment, Hunters Point Shipyard, San Francisco, California." December 12.

Harding Lawson Associates (HLA). 1990. "Preliminary Assessment Other Areas/Utilities, Naval Station Treasure Island Hunters Point Annex, San Francisco, California." October 19.

IT Corporation. 2002. "Draft Waste Consolidation Summary Report, Parcel B, Hunters Point Shipyard, San Francisco, California." October 23.

Naval Energy and Environmental Support Activity (NEESA). 1984. "Initial Assessment Study (IAS) of Hunters Point Naval Shipyard (Disestablished), San Francisco, California." NEESA 13-059. October.

PRC Environmental Management, Inc. (PRC), Levine Fricke Recon, Inc. (LFR), and Uribe & Associates (U&A). 1996. "Parcel B Remedial Investigation, Draft Final Report, Hunters Point Shipyard, San Francisco, California." June 3.

Supervisor of Shipbuilding Conversion and Repair, Portsmouth, Virginia, Environmental Detachment (SSPORTS). 1998. "Final PCB Assessment and Removal Report for High Voltage PCB Electrical Devices, Hunters Point Shipyard, San Francisco, California." March 24.

SSPORTS. 1999. "Polychlorinated Biphenyl Survey/Abatement Report." July.

Tetra Tech Inc. (Tetra Tech). 1998. "Final Basewide Environmental Baseline Survey, Revision 01, Hunters Point Shipyard, San Francisco, California." September 4.

Tetra Tech FW Inc. (TtFW). 2004. "Draft Final Post Construction Report: Decontaminate Process Equipment, Conduct Waste Consolidation, and Provide Asbestos Services in Parcels B, C, D, and E, Hunters Point Shipyard, San Francisco, California." July 9.

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Table 3a, Parcel B

Analytical Group	Chemical
METAL	ALUMINUM
METAL	ANTIMONY
METAL	ARSENIC
METAL	BARIUM
METAL	BERYLLIUM
METAL	CADMIUM
METAL	CHROMIUM
METAL	CHROMIUM-VI
METAL	COBALT
METAL	COPPER
METAL	IRON
METAL	LEAD
METAL	MANGANESE
METAL	MERCURY
METAL	MOLYBDENUM
METAL	NICKEL
METAL	SELENIUM
METAL	SILVER
METAL	THALLIUM
METAL	VANADIUM
METAL	ZINC
VOA	1,1,1-TRICHLOROETHANE
VOA	1,1,2,2-TETRACHLOROETHANE
VOA	1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE
VOA	1,1,2-TRICHLOROETHANE
VOA	1,1-DICHLOROETHANE
VOA	1,1-DICHLOROETHENE
VOA	1,2,4-TRICHLOROBENZENE
VOA	1,2-DICHLOROBENZENE
VOA	1,1-DICHLOROPROPENE
VOA	1,2,4-TRIMETHYLBENZENE
VOA	1,2-DICHLOROETHANE
VOA	1,2-DICHLOROETHENE (TOTAL)
VOA	1,2-DICHLOROPROPANE
VOA	1,3,5-TRIMETHYLBENZENE
VOA	1,3-DICHLOROBENZENE
VOA	1,4-DICHLOROBENZENE
VOA	1,4-DIOXANE
VOA	2-BUTANONE
VOA	2-HEXANONE
VOA	4-METHYL-2-PENTANONE
VOA	ACETONE
VOA	BENZENE
VOA	BROMODICHLOROMETHANE
VOA	BROMOFORM
VOA	BROMOMETHANE

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Table 3a, Parcel B

Analytical Group	Chemical
VOA	CARBON DISULFIDE
VOA	CARBON TETRACHLORIDE
VOA	CHLOROBENZENE
VOA	CHLOROETHANE
VOA	CHLOROFORM
VOA	CHLOROMETHANE
VOA	CIS-1,2-DICHLOROETHENE
VOA	CIS-1,3-DICHLOROPROPENE
VOA	DICHLORODIFLUOROMETHANE
VOA	ETHYLBENZENE
VOA	M,P-XYLENES
VOA	METHYLENE CHLORIDE
VOA	NAPHTHALENE
VOA	N-BUTYLBENZENE
VOA	O-XYLENE
VOA	PARA-ISOPROPYL-TOLUENE
VOA	SEC-BUTYLBENZENE
VOA	STYRENE
VOA	TERT-BUTYL METHYL ETHER
VOA	TETRACHLOROETHENE
VOA	TOLUENE
VOA	TRANS-1,2-DICHLOROETHENE
VOA	TRANS-1,3-DICHLOROPROPENE
VOA	TRICHLOROETHENE
VOA	TRICHLOROFUOROMETHANE
VOA	VINYL ACETATE
VOA	VINYL CHLORIDE
VOA	XYLENE (TOTAL)
SVOA	2-CHLOROPHENOL
SVOA	1-METHYLNAPHTHALENE
SVOA	2-METHYLNAPHTHALENE
SVOA	2,4,6-TRICHLOROPHENOL
SVOA	2,6-DINITROTOLUENE
SVOA	4-METHYLPHENOL
SVOA	4-NITROPHENOL
SVOA	ACENAPHTHENE
SVOA	ACENAPHTHYLENE
SVOA	ACETOPHENONE
SVOA	ANTHRACENE
SVOA	AZOBENZENE
SVOA	BENZALDEHYDE
SVOA	BENZO(A)ANTHRACENE
SVOA	BENZO(A)PYRENE
SVOA	BENZO(B)FLUORANTHENE
SVOA	BENZO(G,H,I)PERYLENE
SVOA	BENZO(K)FLUORANTHENE
SVOA	BENZOIC ACID

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Table 3a, Parcel B

Analytical Group	Chemical
SVOA	BENZYL ALCOHOL
SVOA	BIS(2-ETHYLHEXYL)PHTHALATE
SVOA	BUTYLBENZYLPHTHALATE
SVOA	CAPROLACTAM
SVOA	CARBAZOLE
SVOA	CHRYSENE
SVOA	DIBENZ(A,H)ANTHRACENE
SVOA	DIBENZOFURAN
SVOA	DIETHYLPHTHALATE
SVOA	DI-N-BUTYLPHTHALATE
SVOA	DI-N-OCTYLPHTHALATE
SVOA	DIOXIN CONGENERS
SVOA	FLUORANTHENE
SVOA	FLUORENE
SVOA	FURAN CONGENERS
SVOA	HEXACHLOROETHANE
SVOA	INDENO(1,2,3-CD)PYRENE
SVOA	N-NITROSO-DI-N-PROPYLAMINE
SVOA	N-NITROSODIPHENYLAMINE
SVOA	PENTACHLOROPHENOL
SVOA	PHENANTHRENE
SVOA	PHENOL
SVOA	PYRENE
PEST/PCB	4,4'-DDD
PEST/PCB	4,4'-DDE
PEST/PCB	4,4'-DDT
PEST/PCB	ALDRIN
PEST/PCB	ALPHA-BHC
PEST/PCB	ALPHA-CHLORDANE
PEST/PCB	AROCLOR-1016
PEST/PCB	AROCLOR-1242
PEST/PCB	AROCLOR-1248
PEST/PCB	AROCLOR-1254
PEST/PCB	AROCLOR-1260
PEST/PCB	BETA-BHC
PEST/PCB	DELTA-BHC
PEST/PCB	DIELDRIN
PEST/PCB	ENDOSULFAN-I
PEST/PCB	ENDOSULFAN-II
PEST/PCB	ENDOSULFAN-SULFATE
PEST/PCB	ENDRIN
PEST/PCB	ENDRIN-ALDEHYDE
PEST/PCB	ENDRIN-KETONE
PEST/PCB	GAMMA-BHC (LINDANE)
PEST/PCB	GAMMA-CHLORDANE
PEST/PCB	HEPTACHLOR
PEST/PCB	HEPTACHLOR-EPOXIDE

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Table 3a, Parcel B	
Analytical Group	Chemical
PEST/PCB	METHOXYCHLOR
PEST/PCB	PCB CONGENERS
TPH	DIESEL RANGE ORGANICS
TPH	GASOLINE RANGE ORGANICS
TPH	MOTOR OIL RANGE ORGANICS
TPH	TPH-UNKNOWN MOTOR OIL
TPH	TRPH
ANION	CHLORIDE
ANION	NITRATE
ANION	ORTHOPHOSPHATE
ANION	SULFATE
OTHER	CHRYSTILE ASBESTOS
OTHER	CYANIDE
OTHER	DIBUTYL TIN
OTHER	MONOBUTYL TIN
OTHER	TETRABUTYL TIN
OTHER	TRIBUTYL TIN

Notes:

BHC ————— Hexachlorocyclohexane
 Chromium VI ——— Hexavalent chromium
 DDD ————— Dichlorodiphenyldichloroethane
 DDE ————— Dichlorodiphenyldichloroethene
 DDT ————— Dichlorodiphenyltrichloroethane
 PCB ————— Polychlorinated biphenyl
 PEST ————— Pesticide
 SVOA ————— Semivolatile organic analysis
 TPH ————— Total petroleum hydrocarbons
 TRPH ————— Total recoverable petroleum hydrocarbons
 VOA ————— Volatile organic analysis

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TABLE 3b

REASONABLY EXPECTED ENVIRONMENTAL CONDITIONS FOR PARCEL G

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The following table lists chemicals that are reasonably expected to be present in media at Parcel G based on the history of past processes, operations, and activities at Parcel G and HPNS in general. Some of the key documents describing past activities are listed below; refer to the HPNS Administrative Record files for additional information that may be applicable or relevant.

Harding Lawson Associates (HLA). 1990. "Preliminary Assessment Other Areas/Utilities, Naval Station Treasure Island Hunters Point Annex, San Francisco, California." October 19.

HLA. 1994. "Draft Final Parcel D Site Inspection Report Naval Station Treasure Island Hunters Point Annex.

Naval Energy and Environmental Support Activity (NEESA). 1984. "Initial Assessment Study (IAS) of Hunters Point Naval Shipyard (Disestablished), San Francisco, California." NEESA 13-059. October.

PRC Environmental Management, Inc. (PRC), Levine Fricke Recon, Inc. (LFR), and Uribe & Associates (U&A). 1996. "Parcel D Remedial Investigation, Draft Final Report, Hunters Point Shipyard, San Francisco, California." October 25.

SulTech. 2007. "Final Revised Feasibility Study, Parcel D, Hunters Point Shipyard, San Francisco, California." November 30.

Supervisor of Shipbuilding Conversion and Repair, Portsmouth, Virginia, Environmental Detachment (SSPORTS). 1998. "Final PCB Assessment and Removal Report for High Voltage PCB Electrical Devices, Hunters Point Shipyard, San Francisco, California." March 24.

SSPORTS. 1999. "Polychlorinated Biphenyl Survey/Abatement Report." July.

Tetra Tech Inc. (Tetra Tech). 1998. "Final Basewide Environmental Baseline Survey, Revision 01, Hunters Point Shipyard, San Francisco, California." September 4.

Tetra Tech FW Inc. (TtFW). 2004. "Draft Final Post Construction Report: Decontaminate Process Equipment, Conduct Waste Consolidation, and Provide Asbestos Services in Parcels B, C, D, and E, Hunters Point Shipyard, San Francisco, California." July 9.

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Table 3b, Parcel G

Analytical Group	Chemical
METAL	ALUMINUM
METAL	ANTIMONY
METAL	ARSENIC
METAL	BARIUM
METAL	BERYLLIUM
METAL	CADMIUM
METAL	CHROMIUM
METAL	CHROMIUM-VI
METAL	COBALT
METAL	COPPER
METAL	IRON
METAL	LEAD
METAL	MANGANESE
METAL	MERCURY
METAL	MOLYBDENUM
METAL	NICKEL
METAL	SELENIUM
METAL	SILVER
METAL	THALLIUM
METAL	VANADIUM
METAL	ZINC
VOA	1,1,1-TRICHLOROETHANE
VOA	1,1,2,2-TETRACHLOROETHANE
VOA	1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE
VOA	1,1,2-TRICHLOROETHANE
VOA	1,1-DICHLOROETHANE
VOA	1,1-DICHLOROETHENE
VOA	1,2,4-TRICHLOROBENZENE
VOA	1,2-DICHLOROETHANE
VOA	1,2-DICHLOROETHENE (TOTAL)
VOA	1,3-DICHLOROBENZENE
VOA	1,4-DICHLOROBENZENE
VOA	1,4-DIOXANE
VOA	2-BUTANONE
VOA	2-HEXANONE
VOA	4-METHYL-2-PENTANONE
VOA	ACETONE
VOA	BENZENE
VOA	BROMODICHLOROMETHANE
VOA	BROMOMETHANE
VOA	CARBON DISULFIDE
VOA	CARBON TETRACHLORIDE
VOA	CHLOROFORM
VOA	CHLOROMETHANE
VOA	CIS-1,2-DICHLOROETHENE
VOA	ETHYLBENZENE

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Table 3b, Parcel G

Analytical Group	Chemical
VOA	M,P-XYLENES
VOA	METHYLENE CHLORIDE
VOA	NAPHTHALENE
VOA	O-XYLENE
VOA	TERT-BUTYL METHYL ETHER
VOA	TETRACHLOROETHENE
VOA	TOLUENE
VOA	TRANS-1,2-DICHLOROETHENE
VOA	TRICHLOROETHENE
VOA	TRICHLOROFLUOROMETHANE
VOA	VINYL CHLORIDE)
VOA	XYLENE (TOTAL)
SVOA	2,4-DIMETHYLPHENOL
SVOA	1-METHYLNAPHTHALENE
SVOA	2-METHYLNAPHTHALENE
SVOA	2-METHYLPHENOL
SVOA	4-METHYLPHENOL
SVOA	ACENAPHTHENE
SVOA	ACENAPHTHYLENE
SVOA	ANTHRACENE
SVOA	BENZO(A)ANTHRACENE
SVOA	BENZO(A)PYRENE
SVOA	BENZO(B)FLUORANTHENE
SVOA	BENZO(G,H,I)PERYLENE
SVOA	BENZO(K)FLUORANTHENE
SVOA	BIS(2-ETHYLHEXYL)PHTHALATE
SVOA	BUTYLBENZYLPHTHALATE
SVOA	CARBAZOLE
SVOA	CHRYSENE
SVOA	DIBENZ(A,H)ANTHRACENE
SVOA	DIBENZOFURAN
SVOA	DI-N-BUTYLPHTHALATE
SVOA	DI-N-OCTYLPHTHALATE
SVOA	DIOXIN-CONGENERS
SVOA	FLUORANTHENE
SVOA	FLUORENE
SVOA	FURAN CONGENERS
SVOA	HEXACHLOROETHANE
SVOA	INDENO(1,2,3-CD)PYRENE
SVOA	ISOPHORONE
SVOA	PENTACHLOROPHENOL
SVOA	PHENANTHRENE
SVOA	PHENOL
SVOA	PYRENE
PEST/PCB	4,4'-DDD
PEST/PCB	4,4'-DDE
PEST/PCB	4,4'-DDT

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Table 3b, Parcel G

Analytical Group	Chemical
PEST/PCB	ALDRIN
PEST/PCB	ALPHA-CHLORDANE
PEST/PCB	AROCLOR-1242
PEST/PCB	AROCLOR-1254
PEST/PCB	AROCLOR-1260
PEST/PCB	BETA-BHC
PEST/PCB	DELTA-BHC
PEST/PCB	DIELDRIN
PEST/PCB	ENDOSULFAN-I
PEST/PCB	ENDOSULFAN-II
PEST/PCB	ENDRIN
PEST/PCB	ENDRIN-ALDEHYDE
PEST/PCB	ENDRIN-KETONE
PEST/PCB	GAMMA-CHLORDANE
PEST/PCB	HEPTACHLOR
PEST/PCB	HEPTACHLOR-EPOXIDE
PEST/PCB	PCB-CONGENERS
TPH	DIESEL RANGE ORGANICS
TPH	GASOLINE RANGE ORGANICS
TPH	MOTOR OIL RANGE ORGANICS
TPH	TPH-UNKNOWN MOTOR OIL
TPH	TRPH
ANION	CHLORIDE
ANION	NITRATE
ANION	ORTHOPHOSPHATE
ANION	SULFATE
OTHER	CYANIDE

Notes:

BHC ————— Hexachlorocyclohexane
 Chromium VI ————— Hexavalent chromium
 DDD ————— Dichlorodiphenyldichloroethane
 DDE ————— Dichlorodiphenyldichloroethene
 DDT ————— Dichlorodiphenyltrichloroethane
 PCB ————— Polychlorinated biphenyl
 PEST ————— Pesticide
 SVOA ————— Semivolatile organic analysis
 TPH ————— Total petroleum hydrocarbons
 TRPH ————— Total recoverable petroleum hydrocarbons
 VOA ————— Volatile organic analysis

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Table 4
DOCUMENT MATRIX IDENTIFYING NAVY REVIEW ROLES

The following table identifies documents that must be prepared by the SFRA in accordance with the ETCA and AOC and submitted to the Navy and identifies the Navy's role in reviewing them.

1. Information Only
a. AOC correspondence / documents
b. Public fact sheets
c. Reuse Plan updates
d. Notices of Force Majeure and related documents required by the AOC
e. Statements of Position and other documents submitted by SFRA/Lennar during dispute resolution under the AOC
f. Notices of Noncompliance and Stop Work, Findings of Default issued under the AOC
g. Health and safety plans submitted in conjunction with RAWPs
2. Review and Comment
a. Soil vapor extraction system reports (monitoring, O&M activities, etc)
b. Long-term groundwater monitoring reports
c. Public involvement / community management plans
d. Waste management plans
e. Periodic progress reports and schedules including reports in the ETCA and AOC (as provided to the EI underwriter)
f. Annual IC Compliance Monitoring Reports
3. Review and Concurrence / Approval
ag. RAWPs, including alternate cover designs (pre- and post-remediation), shoreline revetment designs, and vapor mitigation system designs
Bh. O&M plans
ej. Amended PCAPs
Dj. RACRs (and interim RACRs related to long-term obligations)
Ej. Reports related to long-term obligations (O&M inspection reports, etc)
fl. Soil vapor memorandum to adjust the size of the ARIC for VOC vapors
gm. Five-year review reports (beginning with year 2023)
ho. Amendments to LUC RD reports
p. Certificates of completion
3. Review and Concurrence/Approval
ia. Amendments to EI policies the Environmental Insurance Policies
jb. Risk management plans
k. Certificates of completion

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AOC	Administrative Order on Consent
ARIC	Area requiring institutional controls
EI	Environmental insurance
ETCA	Early transfer cooperative agreement
IC	Institutional control
LUC RD	Land use control remedial design
O&M	Operation and maintenance
PCAP	Petroleum corrective action plan
RACR	Remedial action completion report
RAWP	Remedial action work plan
SFRA	San Francisco Redevelopment Agency
VOC	Volatile organic compound

Explanation of Categories:

“Information Only” means the Navy receives the document in its final form and does not receive draft or draft final versions. The Navy will not provide comments on these documents.

“Review and Comment” means the Navy receives draft, draft final, and final versions of the document and may provide comments for SFRA and Environmental Regulatory Agency consideration.

“Review and Concurrence/Approval” means the Navy receives draft, draft final, and final versions of the document. The Navy shall provide comments and the Navy and SFRA must reach agreement on the resolution of Navy’s comments before the document is finalized and the Navy must concur upon the final document.

APPENDIX A
APPLICABLE AND RELEVANT DOCUMENTS

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The Navy believes that documentation provided with this TSRS represents the most recent and appropriate documentation available for Hunters Point Naval Shipyard and the sites identified in this TSRS. However, if there is a conflict between this information and other site documentation (the existing reports), SFRA is solely responsible for reviewing all available information and forming its independent, professional conclusions and interpretations of site conditions and requirements to meet the objectives of the ETCA. This information is not intended as a substitute for complete analysis of technical data available, nor is it intended to be a guide on how SFRA should address achievement of the performance objectives/standards.

Specific documents may be made available following a request to the Navy, if the documentation can be distributed in a timely manner. Electronic format is not guaranteed.

Applicable and Relevant Documents		
Title	Author	Date
Technical memorandum reporting results of soil gas surveys and delineating the areas requiring institutional controls for VOC vapors	Sealaska	10/10?
Draft Final Remedial Design Package, Parcel B, Excluding Installation Restoration Sites 7 and 18, Hunters Point Shipyard, San Francisco, California	ChaduxTt	7/30/10
Draft Work Plan for Soil Vapor Intrusion Survey, Parcels B, D-1, G, and UC-2, Hunters Point Shipyard, San Francisco, California	Sealaska	7/10
Remedial Action Work Plan for Installation Restoration Sites 07 and 18 at Parcel B; Soil Hotspot Locations at Parcels B, D-1, and G; and Soil Stockpiles at Parcels D-1 and G, Hunters Point Shipyard, San Francisco, California	ERRG	7/10
Draft Final Remedial Design Package, Parcel G, Hunters Point Shipyard, San Francisco, California	ChaduxTt	6/8/10
Final Memorandum, Approach for Developing Soil Gas Action Levels for Vapor Intrusion Exposure at	ChaduxTt	4/30/10

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Applicable and Relevant Documents		
Title	Author	Date
Hunters Point Shipyard, San Francisco, California		
Final Parcels D-1 and G Groundwater Treatability Study Technical Report, IR-09, IR-33, and IR-71, Hunters Point Shipyard, San Francisco, California	Alliance Compliance	3/10
Final Remedial Design Package, Installation Restoration Sites 7 and 18, Parcel B, Hunters Point Shipyard, San Francisco, California	ChaduxTt	1/8/10
Draft Petroleum Hydrocarbon Site Closure Report, Parcels D-1, D-2, and G (Former Parcel D), Hunters Point Shipyard, San Francisco, California	ITSI	12/09
Shoreline Protection Technical Memorandum, Installation Restoration Site 7, Parcel B, Hunters Point Shipyard, San Francisco, California	ChaduxTt	4/3/09
Final Record of Decision for Parcel G, Hunters Point Shipyard, San Francisco, California	Navy	2/18/09
Candlestick Point / Hunters Point Development Project, Initial Shoreline Assessment	Moffat and Nichol	2/09
Draft Removal Action Completion Report, Time-Critical Removal Action for the Methane Source Area at IR-07, Parcel B, Hunters Point Shipyard, San Francisco, California	SES-TECH	2/09
Final Amended Parcel B Record of Decision, Hunters Point Shipyard, San Francisco, California	ChaduxTt	1/26/09
Final Removal Action Closeout Report, Time Critical Removal Action, Parcel B, IR-26, Hunters Point Shipyard, San Francisco, California	Insight	1/09
Final Second Five-Year Review of Remedial Actions, Hunters Point Shipyard, San Francisco, California	Jonas	11/11/08
Final Parcel B Construction Summary Report, Hunters Point Shipyard, San Francisco, California	ChaduxTt	7/25/08
Final Base-wide Radiological Work Plan Revision 2, Hunters Point Shipyard, San Francisco, California	TtEC	5/08
Final Parcel B Technical Memorandum in Support of a Record of Decision Amendment, Hunters Point Shipyard, San Francisco, California	ChaduxTt	12/12/07
Revised Final Feasibility Study for Parcel D, Hunters Point Shipyard, San Francisco, California	SulTech	11/30/07
Technical Memorandum for Contamination Delineation at Remedial Unit C5, Revision 1, Hunters Point Shipyard, San Francisco, California	CE2	11/06
Final Phase III Soil Vapor Extraction Treatability Study Report, Parcel B	ITSI	11/06
Final Basewide Radiological Removal Action, Action Memorandum, Revision 2006, Hunters Point	Navy	4/21/06

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Applicable and Relevant Documents		
Title	Author	Date
Shipyards, San Francisco, California		
Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air, Interim Final	DTSC	2/7/05
Historical Radiological Assessment, Volume II, Use of General Radioactive Materials, 1939 to 2003, Hunters Point Shipyard	NAVSEA	8/04
Draft Final Post Construction Report: Decontaminate Process Equipment, Conduct Waste Consolidation, and Provide Asbestos Services in Parcels B, C, D, and E, Hunters Point Shipyard, San Francisco, California	TtFW	7/9/04
Final Cost and Performance Report, Zero-Valent Iron Injection Treatability Study, Building 123, Parcel B	ERRG and URS	6/04
Final Community Involvement Plan, Hunters Point Shipyard, San Francisco, California	ITSI and Tetra Tech	4/04
Final Parcel B Shoreline Characterization Technical Memorandum, Hunters Point Shipyard, San Francisco, California	Tetra Tech and ITSI	3/23/04
Final First Five-Year Review of Remedial Actions Implemented at Hunters Point Shipyard, San Francisco, California	Tetra Tech	12/10/03
Draft Waste Consolidation Summary Report, Parcel B, Hunters Point Shipyard, San Francisco, California	IT Corp	10/23/02
Letter Regarding Concurrence that A-Aquifer Groundwater at the Hunters Point Naval Shipyard, San Francisco, Meets the Exemption Criteria in the State Water Resources Control Board Source of Drinking Water Resolution 88-63. From Mr. Curtis Scott, Water Board. To Mr. Keith Forman, Base Realignment and Closure Environmental Coordinator, Naval Facilities Engineering Command	RWQCB	9/25/03
Final Soil Vapor Extraction Confirmation Study Summary, Building 123, Installation Restoration Site 10, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	8/19/03
Five-Year Review Process in the Superfund Program EPA/540/F/02/004	EPA	4/03
Draft Phase II Soil Vapor Extraction Treatability Study Report, Building 123, IR-10, Parcel B, Hunters Point Shipyard, San Francisco, California	IT Corp	2/14/02
Definition of the Installation Restoration Site 25 Boundary. Memorandum from Mr. Richard Mach, BRAC Environmental Coordinator, to Hunters Point Shipyard administrative record file	Navy	2/1/02

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Applicable and Relevant Documents		
Title	Author	Date
Information Advisory Clean Imported Fill Material	DTSC	10/01
Comprehensive Five-Year Review Guidance EPA/540/R/01/007	EPA	6/01
Final Technical Memorandum, Parcel B Storm Drain Infiltration Study, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/28/01
Final Remedial Design Documents Amendment, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/20/01
Final Technical Memorandum, Distribution of the Bay Mud Aquitard and Characterization of the B-Aquifer in Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech	2/19/01
Final Explanation of Significant Differences, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	5/4/00
Final Remedial Design Documents, Parcel B, Hunters Point Shipyard, San Francisco, California	Tetra Tech and MK	8/19/99
Draft Final Technical Memorandum, Nickel Screening and Implementation Plan, Hunters Point Shipyard, San Francisco, California	Tetra Tech	8/4/99
Polychlorinated Biphenyl Survey/Abatement Report, Hunters Point Shipyard, San Francisco, California	SSPORTS	7/99
Completion Report, Exploratory Excavations, Hunters Point Naval Shipyard, San Francisco, California	IT Corp	6/99
Final Basewide Environmental Baseline Survey, Revision 01, Hunters Point Shipyard, San Francisco, California	Tetra Tech	9/4/98
Final Explanation of Significant Differences, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	8/24/98
Final PCB Assessment and Removal Report for High Voltage PCB Electrical Devices, Hunters Point Shipyard, San Francisco, California	SSPORTS	3/24/98
Final Record of Decision, Parcel B, Hunters Point Shipyard, San Francisco, California	Navy	10/7/97
Hunters Point Shipyard Redevelopment Plan	SFRA	7/14/97
Parcel B Feasibility Study, Final Report, Hunters Point Shipyard, San Francisco, California	PRC	11/26/96
Parcel D Remedial Investigation, Draft Final Report, Hunters Point Shipyard, San Francisco, California	PRC and others	10/25/96
Estimation of Hunters Point Shipyard Groundwater Ambient Levels Technical Memorandum, Hunters Point Shipyard, San Francisco, California.	PRC	9/16/96

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Applicable and Relevant Documents		
Title	Author	Date
Parcel B Remedial Investigation, Draft Final Report, Hunters Point Shipyard, San Francisco, California	PRC and others	6/3/96
Draft Calculation of Hunters Point Ambient Levels, Hunters Point Annex, San Francisco, California	PRC	8/17/95
Draft Final Parcel D Site Inspection Report Naval Station Treasure Island Hunters Point Annex, San Francisco, California	HLA	1994
Preliminary Assessment Other Areas/Utilities, Naval Station Treasure Island Hunters Point Annex, San Francisco, California	HLA	10/19/90
Initial Assessment Study of Hunters Point Naval Shipyard (Disestablished), San Francisco, California	NEESA	10/84

BRAC	Base realignment and closure
DTSC	Department of Toxic Substances Control
EPA	U.S. Environmental Protection Agency
ERRG	Engineering/Remediation Resources Group
HLA	Harding Lawson Associates
ITSI	Innovative Technical Solutions, Inc.
MK	Morrison Knudsen Corporation
NAVSEA	Naval Sea Systems Command
NEESA	Naval Energy and Environmental Support Activity
PCB	Polychlorinated biphenyl
PRC	PRC Environmental Management, Inc.
RWQCB	San Francisco Bay Regional Water Quality Control Board
SFRA	San Francisco Redevelopment Agency
SSPORTS	Supervisor of Shipbuilding Conversion and Repair, Portsmouth, Virginia, Environmental Detachment
TiFW	Tetra Tech FW Inc.
VOC	Volatile organic compound

ATTACHMENT 1

Environmental Work Instruction EVR.4, Implementing and Maintaining the CERCLA
Administrative Record and Compendium at NAVFAC Southwest

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